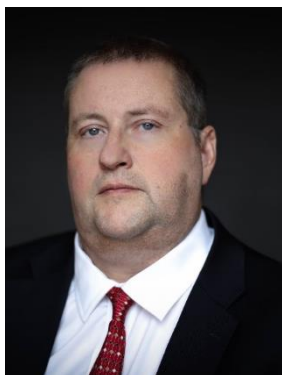




MUNICIPAL CASE LAW REVIEW AND UPDATE



Sean P. Beiter

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**2020 CAASNY ANNUAL MEETING
Via ZOOM
SEPTEMBER 14, 2020
10:00 A.M. TO 11:00 A.M.**



MUNICIPAL LAW UPDATE

NEW YORK STATE HUMAN RIGHTS LAW

- *EMMONS V. BROOME COUNTY*, 180 AD3D 1213 (3RD DEPT. 2020)
- *STEWART V. NEW YORK CITY DEPT OF EDUCATION*, 182 AD3D 472 (1ST DEPT 2020)
- *CHAPLIN V. NEW YORK STATE DIVISION OF HUMAN RIGHTS*, 185 AD3D 1022 (2ND DEPT. 2020)
- *LeTRAY V. NYSDHR*, 181 AD3D 1296 (4TH DEPT. 2020)



MUNICIPAL LAW UPDATE

CIVIL SERVICE LAW SECTION 75

CARCONE V. CITY OF UTICA, 185 AD3D 1476
(4TH DEPT. 2020)



MUNICIPAL LAW UPDATE

PUBLIC EMPLOYMENT RELATIONS BOARD

- *STATE OF NEW YORK V. PERB*, 183 AD3D 1172 (3RD DEPT 2020).
- *STATE OF NEW YORK V. PERB*, 183 AD3D 1061 (3RD DEPT. 2020)
- *SULLIVAN COUNTY PBA V. PERB*, 179 AD3D 1270 (3RD DEPT. 2020)



MUNICIPAL LAW UPDATE

ENFORCEMENT OF ARBITRATION AWARDS

- *VILLAGE OF ENDICOTT V. ENDICOTT PBA*, 182 AD3D 738 (3RD DEPT. 2020)
- *BUFFALO TEACHERS FEDERATION V. CITY OF BUFFALO SCHOOL DISTRICT*, 179 AD3D 1553 (4TH DEPT. 2020)
- *BUFFALO TEACHERS FEDERATION V. CITY OF BUFFALO SCHOOL DISTRICT* 2020 N.Y.Slip Opinion 04647 (4TH DEPT. 2020)
- *LOPEZ V. CITY OF NEW YORK*, 180 AD3D 465 (1ST DEPT 2020)



MUNICIPAL LAW UPDATE

ENFORCEMENT OF ARBITRATION AWARDS -continued-

- *BOARD OF EDUCATION OF THE CITY OF YONKERS SCHOOL DISTRICT V. YONKERS FEDERATION OF TEACHERS, 185 AD3D 811 (2ND DEPT. 2020)*



MUNICIPAL LAW UPDATE

RETIREMENT BENEFITS

*EVANS V. DEPOSIT CENTRAL SCHOOL
DISTRICT, 183 AD 3D 1081 (3RD DEPT. 2020)*



MUNICIPAL LAW UPDATE

NOTICE OF CLAIM

- *McVEA V. COUNTY OF ORANGE*, 2020 SLIP OPINION 04840 (2ND DEPT. 2020)
- *CHODKOWSKI V. COUNTY OF NASSAU*, 180 AD3D 778 (2ND DEPT. 2020)



MUNICIPAL LAW UPDATE

CPLR ARTICLE 78 SPECIAL PROCEEDINGS

- *SPENCE V. GOER*, 183 AD3D 1199 (3RD DEPT. 2020)
- *KRUG V. CITY OF BUFFALO*, 34 NY3D 1094 (2019)
- *CABRERA V. CITY OF NEW YORK CIVIL SERVICE COMMISSION*, 181 AD3D 540 (1ST DEPT. 2020)



MUNICIPAL LAW UPDATE

FREEDOM OF INFORMATION LAW

- *KIRSCH V. WILLIAMSVILLE CENTRAL SCHOOL DISTRICT*, 184 AD3D 1085 (4TH DEPT 2020)
- *HEPPS V. NEW YORK STATE DEPARTMENT OF HEALTH*, 183 AD3D 283 (3RD DEPT. 2020)
- *FORSYTH V. CITY OF ROCHESTER*, 185 AD3D 1499 (4TH DEPT. 2020)
- *MORRIS V. COUNTY OF NASSAU*, 184 AD3D 830 (2ND DEPT. 2020)



MUNICIPAL LAW UPDATE

FREEDOM OF INFORMATION LAW

-CONTINUED -

- *McDEVITT V. SUFFOLK COUNTY*, 183 AD3D 826 (2ND DEPT. 2020)
- *JEWISH PRESS, INC. V. NEW YORK CITY DEPARTMENT OF EDUCATION*, 183 AD3D 731 (2ND DEPT., 2020)



Repeal of Civil Rights Law § 50-a

- Signed June 12, 2020
- Effective immediately
- Prior to its repeal it prevented disclosure of police officer personnel records without written consent of the officer or a court order
- Included all personnel records used to evaluate performance toward continued employment or promotion



Repeal of Civil Rights Law § 50-a

- Amendments to the Freedom of Information Law (See Public Officers Law §§ 84-90)
- Allows for the redaction of certain information in “law enforcement disciplinary records” prior to disclosure
 - complaints, allegations and charges against an employee;
 - the name of the employee complained of or charged;
 - the transcript of any disciplinary trial or hearing, including any exhibits;
 - the disposition of any disciplinary proceeding; and
 - the final written opinion or memorandum supporting the disposition and discipline imposed, including the factual findings, analysis of conduct and appropriate discipline



Repeal of Civil Rights Law § 50-a

- Mandatory Redactions:
 - Medical history (if it is unrelated to misconduct)
 - Home addresses, personal telephone numbers, personal cell phone numbers, social security numbers, personal email addresses, including information about a complainant or any other person named in a law enforcement disciplinary record;
 - Participation in an employee assistance program, mental health service, substance abuse service
 - UNLESS such use was mandated by a disciplinary proceeding



Repeal of Civil Rights Law § 50-a

- Permitted Redaction of “technical infraction”
 - A minor rule violation solely related to the enforcement of administrative departmental rules that:
 - Do not involve interactions with members of the public;
 - Are not of public concern; and
 - Are not otherwise connected to such person’s investigative, enforcement, training, supervision, or reporting responsibilities



Eric Garner Anti-chokehold Act

- Establishes the crime of aggravated strangulation for police officers or peace officers, where such officer commits the crime of criminal obstruction of breathing or blood circulation, or uses a chokehold or similar restraint, and causes serious physical injury or death
- Signed June 12, 2020
- Effective immediately



New Yorker's Right To Monitor Act

- A person not under arrest or in the custody of a law enforcement official has the right to record police activity and to maintain custody and control of that recording and of any property or instruments used by that person to record police activities
- However, a person in custody or under arrest does not, by that status alone, forfeit such right to record
- Signed June 14, 2020
- Effective 30 days later



Medical Attention of Persons Under Arrest

- When a person is under arrest or otherwise in custody of a police officer, peace officer, or other law enforcement representative or entity, such officer, representative, or entity has a duty to provide attention to the medical and mental health needs of that person
- Signed June 15, 2020
- Effective immediately



Police Statistics and Accountability Act

- Requires the Chief of every police department, county sheriff, and superintendent of state police to promptly report to the New York State Division of Criminal Justice Services (DCJS) any arrest-related death, broken down by county
 - A death that occurs during law enforcement custody or an attempt to establish custody, including, but not limited to, deaths caused by any use of force
- This data will be presented in an annual report to the governor and legislature and is to be presented no later than February 1st of any year
- Signed June 15, 2020
- Effective 180 days later



Discharge of Weapon

- Required disclosure when a law enforcement/peace officer discharges weapon under circumstances where a person *could* be struck by a bullet
- Verbally reported to supervisor within 6 hours
- Prepare and file report within 48 hours
- Not prevented from invoking constitutional right to avoid self-incrimination
- Signed June 15, 2020
- Effective 90 days later



Other Bills

- Crime to report a non-emergency incident involving a member of a protected class
 - Signed June 12, 2020
 - Effective immediately
- Creates office of Special Investigation
 - Signed June 12, 2020
- Body worn cameras by New York State police officers
 - Signed June 16, 2020
- Creates the law enforcement misconduct investigative office
 - Signed June 16, 2020



JUNE 12, 2020 | Albany, NY

No. 203: New York State Police Reform and Reinvention Collaborative

EXECUTIVE ORDER



New York Executive Order 203

- Goal of Executive Order 203 is to “eliminate racial inequities in policing, to modify and modernize policing strategies, policies, procedures, and practices, and to develop practices to better address the particular needs of communities of color to promote public safety, improve community engagement, and foster trust”



New York Executive Order 203

- Governor notes that coordination with the resources of the Division of Criminal Justice Services, the Division of the Budget can increase the effectiveness of the criminal justice system by ensuring that the local police agencies within the state have been actively engaged with stakeholders in the local community and have locally-approved plans for the strategies, policies and procedures of local police agencies



New York Executive Order 203

- Directs that the director of the Division of the Budget, in consultation with the Division of Criminal Justice Services, shall promulgate guidance to be sent to all local governments





Guidance To Be Developed Directing That:

- Each local government entity which has a police agency operating with police officers as defined under 1.20 of the criminal procedure law must perform a comprehensive review of current police force deployments, strategies, policies, procedures, and practices, and develop a plan to improve such deployments, strategies, policies, procedures, and practices, for the purposes of addressing the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color



Requirements of New York Executive Order 203

- Each CEO of the local government shall convene the head of the local police agency, and stakeholders in the community to develop such plan
- Elements of the plan shall:
 - Consider evidence of evidence-based policing strategies, including but not limited to, use of force policies, procedural justice
 - Any studies addressing systemic racial bias or racial justice in policing
 - Include training in de-escalation practices and implicit bias awareness



New York Executive Order 203

Elements of the Plan (cont.)

- Consider any studies addressing systemic racial bias or racial justice in policing
- Law enforcement assisted diversion programs, restorative justice practices, and community-based outreach and conflict resolution
- Problem-oriented policing; hot spots policing; focused deterrence
- Crime prevention through environmental design; violence prevention and reduction interventions
- Model policies and guidelines promulgated by the NYS Municipal Police Training Council and standards promulgated by the NYS Law Enforcement Accreditation Program



Stakeholders that Should be Involved and Consulted

- Membership and leadership of the local police force
- Members of the community, especially from areas that have high numbers of police and community interactions
- Interested non-profit and faith based groups
- Local office of the District Attorney
- Local office of the Public Defender
- Local elected officials



The Political Subdivision Should Create a Plan





The Plan

- The political subdivision, in coordination with its police agency must consult with the stakeholders and create plan to adopt and implement the recommendations resulting from its review and consultation, including:
 - Any modifications, modernizations, and innovations to its policing deployments, strategies, policies, procedures, and practices, tailored to the specific needs of the community and general promotion of improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing



The Plan



- Must be offered for public comment to all citizens in the community
- After public comment, adopted by the local body of the political subdivision by April 1, 2021
- Must be adopted by Local Law or Resolution
- Must transmit a certification to the Director of Division of Budget affirming that the process has been completed and local law or resolution has been adopted



Certification to NYS Division of Budget

- Continued state funding may be conditioned on compliance with these provisions



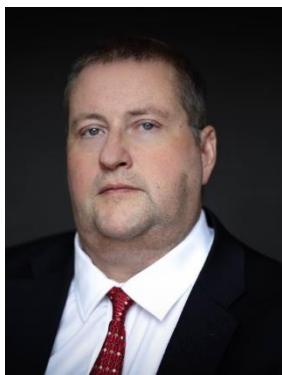


Potential Issues & Practical Considerations:

- Local Law or Resolution?
- Provisions that contradict with current disciplinary codes (i.e. Town Law 155)
- Review data on the stated considerations and applicable studies (relevance will vary by jurisdiction, demographics and population)
- Evaluate, use of body cameras, internal affairs procedures, community policing



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