



Legislative Affairs
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2021 – 2022 Legislative Memorandum

**Subject: An act to repeal chapter 834 of the laws of 1940, relating to the removal of certain policemen
S.268 (Myrie) / A.5528 (Richardson)**

Position: SUPPORT

Recent protests challenging police brutality and demanding a fundamental reassessment of the institution of policing have laid bare the degree to which New Yorkers lack confidence in existing mechanisms for holding police accountable. The police response to these protests demonstrated why that lack of confidence is warranted. As documented in a preliminary report concerning an investigation into the policing of protests in New York City, the Attorney General documented reports of officers driving their vehicles into crowds of protesters, violently shoving people to the ground without provocation, tearing down the face mask of a protester and pepper spraying him, and handcuffing and pepper-spraying elected officials attempting to mediate tense encounters on behalf of their constituents.¹ Confronted with clear evidence of officers engaging in misconduct and violence against protesters, New York City and New York Police Department (“NYPD”) officials repeatedly defended police actions, casting serious doubt on their commitment to holding officers accountable.²

Even if individual cases proceed to formal disciplinary trials, there is little reason for public confidence in their integrity, owing in part to laws that allow police leadership to exercise complete control over all misconduct and disciplinary proceedings against officers. One such law is Chapter 834 of the Laws of 1940, which prevents these proceedings from occurring anywhere other than a police department’s own trial room and requires that they be presided over by a police department employee. As a result,

¹ N.Y. State Office of the Attorney General, *Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd*, July 2020, <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf>.

² Jonathan Allen, *New York City Police Chief Defends Police Driving into Protesters*, Reuters, June 22, 2020, <https://www.reuters.com/article/us-minneapolis-police-new-york-chief/new-york-city-police-chief-defends-police-driving-into-protesters-idUSKBN23T2GT>.

municipalities throughout New York State are prevented from creating or relying on more independent mechanisms for holding officers to account.

In New York City, disciplinary proceedings against the city's 370,000 public employees generally take place at the Office of Administrative Trials and Hearings ("OATH").³ OATH disciplinary trials are presided over by an impartial administrative law judge and are open to the public, with hearing division locations in all five boroughs. The recommended findings and decisions are forwarded to the agency heads who have the ultimate power to accept or reject those findings; according to OATH, 99 percent of its findings were adopted by those agency heads in 2016.⁴ Decisions from the OATH Trial Division are required to be published online.

By contrast, disciplinary trials for NYPD officers take place at One Police Plaza, in an NYPD trial room, presided over by an employee of the NYPD's Office of the Deputy Commissioner of Trials. NYPD rules govern the trial room procedures, and an NYPD employee submits recommended findings and decisions to their supervisors, with the police commissioner having ultimate and complete authority to accept, modify, or reject those recommendations.

While these trials are open to the public, entrance into the building is controlled by the NYPD, and for years, the NYPD refused to release transcripts or written decisions from these trials, citing the now repealed police secrecy law, Section 50-a. During the disciplinary trial for Daniel Pantaleo, the officer responsible for Eric Garner's killing, there were reports that the NYPD "curat[ed] the audience allowed into the room," resulting in reporters and members of the public frequently being turned away due to lack of space.⁵ The NYPD provided no accommodation for overflow rooms, simulcasting, or making any records from the proceeding available.⁶

The NYPD conducts disciplinary trials in its own trial room in part because Chapter 834 requires it. The NYPD attempted to move some disciplinary proceedings to OATH in 2001, but a court ruled this transfer impermissible because of Chapter 834. The court held that, unlike other agency heads who can designate a "deputy or other *person*" to conduct disciplinary proceedings under Civil Service Law § 75, Chapter 834 restricts the police commissioner to designating this authority only to a "deputy or other *employee*."⁷ Because OATH officials are not employed by the police commissioner, they are blocked from presiding over police disciplinary proceedings.

³ NYC Office of Admin. Trials and Hearings, Trials Division Overview, <https://www1.nyc.gov/site/oath/trials/overview.page> (last accessed July 9, 2020).

⁴ *Id.*

⁵ Nick Pinto, *The 'Unsettling' Secrecy of the NYPD's Trial of Daniel Pantaleo*, Gothamist, May 20, 2019, <https://gothamist.com/news/the-unsettling-secrecy-of-the-nypds-trial-of-daniel-pantaleo>.

⁶ *Id.*

⁷ *Lynch v. Giuliani*, 301 A.D.2d 351, 359, 755 N.Y.S.2d 6, 14 (2003) (emphasis added).

S.268 (Myrie) / A.5528 (Richardson) would repeal Chapter 834 and allow police disciplinary proceedings to be moved to an independent and impartial venue. Repealing Chapter 834 would not automatically result in this transfer, but it is a necessary precursor to effectuating such a transfer, whether in New York City or in any locality that wishes to provide for such a process.

Police departments have consistently demonstrated that they are incapable of policing themselves. For years, 50-a was used to hide the extent to which departments fail to hold abusive officers accountable, and the control over physical access to trial rooms further restricted the public's access to information. The opening of these records to public scrutiny will be critically important to exposing these systemic failures, but transparency is only the first step in challenging the ways these systems operate. When police officers are accused of misconduct, the public does not and should not have confidence in a process governed by police department rules and overseen by police department-employed judges to vindicate the public's interest in accountability. And survivors of police abuse and families whose loved ones are killed by police violence should not be asked to enter a police department's headquarters to attend these trials. But Chapter 834 currently requires these outcomes, and it must be repealed if we are to correct them.

The integrity of police disciplinary proceedings will always be in question so long as police departments maintain total control over them. The NYCLU **strongly supports** this bill and urges the legislature to pass it without delay.