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Public Hearing on Examining police safety and public protection in New York City

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Senate Hearing Room

250 Broadway, 19th Floor

New York, NY 10007

STATEMENT OF PATRICK J. LYNCH,
PRESIDENT OF THE PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK

Good afternoon. I would like to thank you Senators and the members of your respective committees for holding these hearings on these urgently important issues and for considering my statement.

New York City police officers perform their jobs today in an environment that is more difficult and dangerous than any in recent memory. We recognize that today's discussion has come about because of the assassination of Police Officers Rafael Ramos and Wenjian Liu, but their murder is only one tragic example of the recent wave of attacks on, and threats against, police officers not only in New York City and New York State, but across the country and around the world.

In New York City, in the past month alone, we have seen two police officers shot while investigating a robbery in the Bronx, an attempt to run down Port Authority police officers outside the Holland Tunnel and acts of sabotage against NYPD patrol cars and police officers' personal vehicles. We saw a breach of a police precinct in Manhattan in December resulting in a serious injury to a police officer.

Further afield, we have seen attacks on police officers in jurisdictions around the country. We've seen reports of a gang member walking into a stationhouse in Baltimore with a loaded weapon in order to "test security," something that the NYPD has warned may be attempted here. We've also seen the multiple terrorist attacks in France, events that bring to mind the terrorist who used a hatchet to assault police officers in Jamaica, Queens last October. The NYPD has made this connection as well and has issued warnings of a new video from a terror group calling for attacks on law enforcement personnel, similar to the previous calls that appear to have inspired the Queens attacker.

These recent events underscore the obvious need for the equipment, training and increased staffing that will allow police officers to better protect themselves and the public from these threats, and I will share some of our specific proposals in that area with you today.

But I also believe that we must address these threats at their source, which is the current climate of hatred and violence directed at police officers. The deranged individual who took the lives of Police Officers Ramos and Liu was not operating in a vacuum. He took his cue from the

stream of hateful anti-police rhetoric that was allowed to flow unchecked during the preceding weeks and months. During the unregulated demonstrations that swept through this city on a nearly daily basis in early December, we heard chants calling for “dead cops,” calling police officers “murderers” and comparing them to members of the Ku Klux Klan. In multiple instances, these threats crossed over into actual assaults on police officers.

At the time, some of our elected officials failed or refused to forcefully condemn or take action to control this hate speech and the related assaults. As a result, we had an individual who observed these protests, who followed their manifestations online, and who ultimately traveled here from several states away with the sole intention of murdering New York City police officers. No matter what crimes he committed prior to that, no matter how mentally unbalanced he may have been, his online posting make it clear that he believed he was taking part in some broader struggle in which police officers — specifically New York City police officers — were the enemy.

In that sense, his motivation and method were essentially identical to those of the “lone wolf” terrorists who have targeted law enforcement officials around the world, heeding the online calls for such attacks put out by the Islamic State and other terror groups. So many of these recent attacks have followed the same pattern: the calls for violence against police officers find their way to the fanatical and the unstable, who then carry them out.

We must put an end to these calls for violence, and to do that we must put an end to the anti-police climate in which they are able to circulate and gain traction. In New York City, as in many places around the country, some elected officials and activists have advanced a narrative which depicts police officers as racially biased and habitually abusive. This narrative purports to show a broad pattern of discriminatory practices and violations of constitutional rights by grafting a small number of anecdotal examples onto the larger statistical picture of police activity.

While we strongly disagree with the conclusions that have been drawn from these anecdotal examples, which in many cases have been misconstrued or mischaracterized, police officers understand why this perception exists. It is at least partially a result of policing policies that have been questioned by the communities we serve. Police officers had no role in creating these policies; in many cases, we have actively opposed them. Here in New York, the PBA and other groups had warned for years that the quota-driven policies put in place by previous policymakers were driving a wedge between police officers and the community. That is why we pressed for state legislation in 2010 to make quotas for all types of police activity illegal, which was passed with the assistance of many of you in the room.

But numerically-driven policies that deprive police officers of the ability to exercise their professional judgment and discretion persisted. Friction with the community increased, particularly in the places most in need of police services, where police leaders directed that these policies be most rigorously applied. And in the past number of years we have seen the predictable backlash in the form of court decisions and legislation introduced at the local level.

But rather than addressing the failed policies that are at the heart of this issue, these misguided reform efforts have invariably shifted the burden onto the police officer on the street. Police officers have been saddled with overlapping layers of bureaucratic oversight. Heightened legal and disciplinary perils have been attached to nearly every aspect of our job. We are told that we need retraining, not in how to effectively protect ourselves and the public while carrying out our leaders' directives, but in courtesy and basic manners. Some voices have even called for police officers to be stripped of the due process rights that are afforded to every other citizen.

The message behind all of these efforts is that the problem is one of police behavior, not public policy or other factors. They are predicated on the idea that police officers are bad actors who must be scrutinized, controlled and punished so that they do not victimize the public they have sworn to protect. Some of our elected leaders may have repeatedly proclaimed their "support" for police officers, but their actions and policies have amounted to official support for those who distrust and disdain law enforcement. Those parties, in turn, use tragic events such as those that occurred in Ferguson and Staten Island to stir up emotions in the street in order to further their own agenda. By the time that message of distrust and disdain filters through the press and through social media platforms online, it has transformed into a message of anger and hatred. Once it reaches an unstable individual with the means and opportunity to attack a police officer, it becomes an act of violence.

In order to prevent another tragedy like the assassination of Police Officers Ramos and Liu, we must break this cycle. We must treat threats against police officers as threats against our society as a whole, and we must punish those who make such threats accordingly. And we must provide our police officers with the resources they need to simultaneously protect themselves and the public from an ever-shifting variety of threats.

At the same time, those who are responsible for setting public safety policy must align themselves behind a clear mission and a set of broadly supported goals. The dramatic crime reductions we have seen in New York City and elsewhere over the past two decades are a testament to what police officers can accomplish when we receive support, resources and clear guidance from our partners in government. Public safety has been the key to our city's current prosperity: neighborhoods that were once virtually unlivable now command some of the highest property values in the world. Businesses and tourists are no longer repelled by an atmosphere of lawlessness — they come in droves and bring with them the private investment and tax revenues that support further efforts to make New York City an attractive place to live and do business. As our former mayor liked to say, it is truly a virtuous cycle.

But now that the virtuous cycle is in effect, some have wondered whether the public safety mission has changed. The controversy over policing policies that I referenced earlier is one part of that discussion. But as I also said earlier, police officers are not in the position of making policy as they patrol the streets. If the public, through their elected representatives, decides that it does not support a given law or law enforcement strategy, then police officers need clear guidance on how they should conduct themselves. If addressing a certain condition is a priority for the community, that must also be made clear and police officers must be supported

in their efforts to implement that priority. If police officers are asked to navigate an overwhelming number of competing or even conflicting priorities without adequate guidance, the result will be poorer public safety outcomes and a further increase in the police-community tensions I described earlier.

The current debate over the so-called “Broken Windows” policing strategy is an example of this need for clarity. Our leaders can’t on the one hand say they support “Broken Windows”-style policing, while on another hand carve out exceptions that swallow the original concept as it has been explained to police officers. If it is no longer supported, or no longer supported in its previous form, police officers need to know what remains and must be provided with coherent direction on how to put this modified approach into practice.

In our view, the twin objectives of protecting police officers and preserving our public safety can and must be addressed simultaneously. We believe that there are several specific actions that you, as New York State Senators and members of these combined committees, can take along with your fellow legislators in order to help further both of these goals:

1. Declare a Moratorium on Local Legislation in the Area of Criminal Justice and Police Procedure

One way to maintain a clear and unified public safety mission is to carefully delineate which division of government has authority over a given area. Criminal procedure law, particularly those laws that impact certain police practices, has historically been a function of state government. Among the many good reasons to maintain this delineation is the need for a uniform body of laws and procedures applicable to the whole state, which is the area in which police officers are empowered to act.

What we have seen recently is an attempt by some local governments to usurp the state’s traditional role and to create a patchwork of laws that place police officers under different procedural burdens depending on the jurisdiction in which they operate. In New York City, this has taken the form of ill-considered local legislation that is fashioned and enacted in response to the latest headlines, without any consideration of its long-term public safety impact or its relationship to the surrounding body of law. One example of this is Local Law 71, a sweepingly vague prohibition of “bias-based profiling” that is inconsistent with — and rightfully superseded by — the New York State Criminal Procedure Law. The PBA is currently suing to reverse this law, but while it remains in force our members are left to guess, upon pain of a civil suit, what several provisions of the law mean and how they differ from the provisions of State law governing the same issue.

Important issues of criminal justice deserve more careful, deliberate and reasoned consideration, and we believe that the Legislature’s state-wide purview leaves it better equipped to play that role. For that reason, we will ask you to pass a law specifically consigning that area to the State Legislature, effectively declaring a moratorium on all local legislation impacting criminal and policing procedures and invalidating any existing local legislation of this type.

2. Protect Due Process for Police Officers

In addition to clearer legal guidelines, police officers need to know that they can operate within them with the same rights and privileges as any other citizen. It is both unreasonable and unfair to expect police officers to protect New Yorker's rights to due process and provide them equal protection under the laws, while simultaneously denying those officers the same due process and equal protection.

U.S. Supreme Court Justice William O. Douglas, in an opinion upholding police officers' Fifth Amendment protections, wrote that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Police officers must be afforded the same legal processes that are guaranteed to the civilian population, especially where liberty interests are implicated.

But recently we have heard calls for changes to the way that criminal cases involving police officers are handled. Many of these proposals would effectively place police officers in a separate justice system. The express purpose of such a system, the one that its proponents freely proclaim, is to ensure that more police officers are indicted on charges that would not stand under the normal operation of the law. This is a blatantly unjust and inequitable concept, and I urge you to oppose any legislation that may come before you that would create a separate justice system for police officers.

3. Increase Penalties for Threats and Assault Against Police Officers

But even while police officers as individuals are on an equal footing with civilians in terms of their protected legal rights, they collectively represent our laws and the public's will to have those laws enforced. As I noted earlier, an attack on a police officer is an attack society as a whole, and the penalties for such attacks must reflect that. For that reason, the PBA is calling for four changes to the existing law that together would strengthen existing penalties for assaults on and threats against police officers, and that would criminalize certain types of speech that encourage imminent violence against them.

The first change would in essence make it a B felony to assault a police officer while at a public assembly and cause a physical injury, making it punishable by up to 30 years in prison. We believe this change in law is necessary to deter the type of conduct we saw during last month's demonstrations. When police officers staff those demonstrations, we are often at a distinct tactical disadvantage because of the number of protestors who turn out, a number that cannot always be predicted with accuracy, and the accompanying expectation that those demonstrations will be peaceful.

The second change will make it a D felony to menace a police officer with a dangerous instrument. Currently, the only conduct that rises to the level of a Menacing of a Police Officer is conduct involving in essence a threat with a deadly weapon. We believe that the addition of the dangerous instrument component will help deter events like the recent incident that occurred during a protest on the Brooklyn Bridge, where a demonstrator used a garbage can as an instrument to threaten the safety of police officers on the bridge below. Of course, these types of

threats with dangerous instruments are not unique to protest situations and are certainly not new. Police officers on patrol have long encountered instances in which other items – bottles, flower pots, stones, concrete — have been hurled from heights or have been threatened to be thrown from heights at police officers below. Numerous police officers have been injured in such attacks over the years and at least one was killed. This type of threat can be just as deadly as those involving guns, knives or other weapons, so the penalties for them should be the same.

The next change would make it a D felony to encourage imminent violence against police officers. It is well established that there is a point where free speech ends and a crime begins. Yelling fire in a crowded movie theater or other types of speech that are intended and likely to produce imminent lawless action are the classic examples of where that line is drawn. We believe that some of the types of hate speech that I referenced earlier, particularly those that direct or demand that a police officer be murdered, fall on the criminal side of that line. The PBA has conducted a significant amount of research over the past number of weeks and we believe that properly drafted legislation criminalizing such threats will survive any judicial review.

A second component of this change would cover similar threats against police officers made by terrorist groups, such as those that have recently been issued by the Islamic State. The recent attacks in Europe, as well the hatchet attack in Queens and the attack on the Canadian Parliament and War Memorial that occurred around the same time, are proof that these online threats are powerful and that law enforcement and military personnel are among the primary targets. This change would make such threats against a police officer a C Felony, subjecting the issuer of such threats to up to 15 years in prison.

Our hope is that these four changes will not only serve to punish the perpetrators but will help prevent such threats from being made.

4. Increase NYPD Staffing

All of the changes I have discussed so far are confined to the area of policy and law, and we do believe that they will play an important role in changing the situation that police officers face on the ground. But they will only be effective if they are backed up by the resources that will allow police officers to effectively protect themselves and the public. As I mentioned, there are urgent needs for such resources in several areas.

The first and most basic need is adequate staffing. In October 1999, the NYPD had a headcount of 41,791 police officers, according to federal data on law enforcement staffing. That works out to roughly 5.6 police officers for every 1,000 New Yorkers, when compared with U.S. Census Bureau population data. Today the uniform strength is approximately 34,500, about 4.1 police officers to protect every 1,000 New Yorkers, although in practice it is often lower due to the normal pattern of retirements and resignations in between each round of hiring. So there are now 7,000 fewer police officers on the streets while the city's population has grown by almost 1 million, and this shrinking ratio of police officers to civilians is further reduced by the explosion of tourists, commuters and business visitors who swell the city's effective population every day.

Incredibly, most of this staffing reduction occurred in the years following the September 11 attacks, a period in which New York City police officers' duties expanded exponentially to fulfill critical counter-terrorism needs and many were drawn away from routine patrol to address the terror threat. As a result, these cuts have been most deeply felt in the local precincts and patrol commands, which provide the basic police services that New Yorkers rely on every day.

The PBA has warned for years that this reduced staffing level is detrimental to public safety and also puts our members at greater risk, and we have repeatedly called for increased staffing. The reduced staffing level was also one of the key factors that lead to the aggressive, quota-driven policies that I referenced earlier, as policy makers and local commanders, under pressure to continue driving crime numbers lower, attempted to do so by imposing activity quotas on the dwindling number of police officers who were available for patrol. The recent calls for greater usage of the "community policing" model simply cannot be met with the existing resources.

Over the past 15 years, proposals for even modest increases in NYPD staffing have met with the same response: that there is simply no money in the budget to hire additional police officers. This has occurred even as the number of City employees as a whole has increased and projected outyear budget deficits have turned time and again into multi-billion dollar surpluses. As I said earlier, these surpluses and the increasing tax revenues that created them would not have occurred without police officers' success in reducing crime during the same period. They represent what some are calling New York City's "peace dividend," but they are not being reinvested in a way that will make that continued growth possible. As the City's population and the demand for police services continues to grow, our policing resources are already approaching their breaking point. If staffing is not increased, some of the public's calls for help will go unanswered. Police officers' safety is already being endangered, and the threats we have been discussing today have all been magnified because the NYPD does not have the manpower to address them.

We believe that the Legislature can play a role in addressing this situation and in creating an environment for better police-community relations. Accordingly, we will ask for legislation that mandates a return to the NYPD's 1999 staffing level, and that sets a minimum threshold for staffing that will rise with the City's growth in the future. This restoration in police staffing could be funded with targeted taxes like those that funded similar staffing increases under the Safe Street, Safe City program of the early 1990s. We have seen that the public is willing to assume additional obligations targeted solely towards public safety. Now is the time to reimplement that limited, targeted tax.

5. Provide Steady Funding Streams for Bullet-Resistant Vests

Putting an adequate numbers of police officers on the street is the first component of the resource picture, but those officers must also have the equipment they need to do their jobs safely. Recently, we saw a proposal by the City Council to allocate additional funds to purchase new bullet resistant vests for some police officers who are currently wearing outdated or expired

vests, as the vest materials are known to degrade and provide less protection over time. This effort by the Council is a good first step, but it also highlights an underlying problem in the way the NYPD furnishes protective equipment to its members.

New police officers are issued bullet resistant vests paid for by the NYPD. In the past, as vest technology improved or when circumstances revealed weaknesses in existing vest models, the PBA pressed for and obtained City-funded upgrades for the majority of police officers, although there are still some of our members who do not have the latest model that provides the maximum amount of coverage.

After the vest is initially issued, however, the NYPD will not pay for a replacement vest except in some limited circumstances in which the vest is damaged in the line of duty through no fault of the wearer, and we have even seen the department resist purchasing vests in some of those cases. By and large, if New York City police officers' vests are worn out, damaged or no longer fit, they must purchase a replacement out of their own pocket.

The risks posed by worn out or ill-fitting vests, or vests with outdated technology, are well documented. Many law enforcement agencies routinely replace their officers' vests every five years or even sooner, and there are sources of state and federal funding through the Department of Justice that will reimburse departments for the costs of replacing vests. And, regardless of cost, the law requires an employer to provide "reasonable and adequate protection to the lives, safety or health of its employees." But there are still New York City police officers on the streets today who are wearing the same vest they were given when they graduated from the Academy over a decade ago.

For that reason, the PBA is planning to seek legislation that will compel the City and the NYPD to pay the cost of issuing bullet resistant vests with the latest technology and maximum coverage, as well as the cost of replacing any vest that is damaged, does not fit or that has passed a given expiration date.

6. Fund an Anti-Terror Assault Kit for All New York City Police Officers

The bullet-resistant vests that police officers wear on a daily basis provide a measure of protection against the routine threats that they may face on patrol. But they are inadequate against many of the threats we have discussed here today, especially the type of active shooter attacks that have been a grim reality of American policing for some time and that are becoming a preferred tactic for terrorists around the world, as we have seen from recent events.

Beginning with the Columbine massacre in 1999 and continuing through more recent attacks such as those in Sandy Hook, Connecticut and Aurora, Colorado, the approach that law enforcement agencies take in responding to such incidents has undergone a complete reversal. In the past, the role of the first units on the scene — usually police officers on routine patrol — was to establish a perimeter and await the arrival of the specialized tactical units who would directly engage the attacker. But in far too many incidents, the casualties increased exponentially during the time it took to deploy these specialized units to the scene.

That is why the NYPD and many departments now instruct police officers to engage the suspect as soon as possible to end the threat and prevent any further loss of life. This means that patrol officers, equipped only with handguns and standard bullet-resistant vests, are expected to confront a shooter or even multiple shooters who may be armed with multiple high-powered weapons and hundreds of rounds of ammunition. That tactical disadvantage is only compounded when police officers are not responding to an attack already in progress but are targeted themselves from the outset, as was the case for some of the police officers who were killed during the Paris attacks.

Shortly after the 2008 terrorist assault on Mumbai, which was one of the most dramatic examples of how a small group of heavily-armed attackers can overwhelm an ill-prepared police force, the PBA began calling for the NYPD to equip all police officers, both those on patrol and those stationed at fixed locations, with an “anti-terror assault kit” consisting at the very least of an assault rifle and tactical body armor, including a ballistic helmet. Now the need for this equipment is even more urgent, as counter-terrorism experts continue to warn that it is a question of when, not if, an attack of this type will occur in New York City. So, we intend to seek legislation that would provide funding for this equipment and compel the NYPD to provide it to all its members. We hope you will give it your support.

7. Equalize Line-of-duty Disability Benefits

All of the measures I have discussed so far are aimed at proactively protecting police officers and ensuring their safety going forward, and nothing should diminish that focus. But no matter what proactive measures we put in place, the dangers of police work will not disappear completely. Police officers will continue to be injured in the line of duty, whether through direct attacks or any of a variety of other hazards they face on the job. It is widely agreed that our society has a moral obligation to care for those who sacrifice their lives or health on our behalf, and I would like to draw your attention to an area in which New York City and New York State have fallen short of meeting that obligation.

As you may recall, former Governor David Paterson vetoed a bill in 2009 that would have continued the Tier 2 pension plan that had applied to all police officers and firefighters in New York State since the early 1970s and that had been extended every two years since 1981. While other police officers and firefighters in the state were placed in the new Tier 5 pension plan, those in New York City were left out of the final legislation. As a result, New York City police officers and firefighters hired after July 2009 were forced into pension Tier 3, a plan that had never applied to police officers and firefighters before.

Tier 3 includes a reduced accident disability pension benefit for those who are permanently disabled in the line of duty. For newly-hired police officers, this benefit can amount to as little as \$27 a day, according to press accounts. This is significantly less than the benefit provided to their more senior colleagues under Tier 2 and the benefit afforded to every other police officer and firefighter in New York State under Tiers 5 and 6.

This disparity is purely an unintended consequence of Governor Paterson's ill-considered veto, and no elected official has publicly supported the resulting inequality in benefits between New York City police officers and firefighters and their colleagues across the state. It seems that all are in agreement on this point, but the political will to address this issue has been lacking in some quarters because its consequences seemed remote and the costs of fixing the broken system have been exaggerated.

Those consequences are no longer remote — they are here. Following the injury to P.O. Rosa Rodriguez, a Tier 3 member who suffered severe lung damage while responding to an arson fire that also killed her partner, P.O. Dennis Guerra, even Governor Paterson himself publicly stated that something must be done to correct this injustice. Several more Tier 3 members have been injured in the line of duty since P.O. Rodriguez, and while so far none of them have been forced to retire with these diminished disability pension benefits, now is the time to act on their behalf and on behalf of those who may be injured in the future.

The cost of failing to take action on this issue far outweighs that of the solution. It is not only a matter of basic fairness to protect our police officers and their families against the dangers they face on our behalf. It is also a matter of public safety. I ask you to put yourself in the position of police officers or firefighters who are unsure whether they will be able to provide for their families if they are hurt on the job. Would you hesitate to put yourself in harm's way?

As we did in last year's legislative session, the PBA will continue to back legislation that would give recently-hired New York City police officers line-of-duty disability benefits that are comparable with those available to their more senior colleagues and other police officers in New York state. This legislation already has strong local support — as of today, 35 members of the City Council have signed onto a resolution in support of such a change — and I hope you and your colleagues in the legislature will give it your support as well.

I would like to conclude my remarks today by stressing once again that protecting our police officers and ensuring that they are treated fairly is essential to the public safety of the city and New York State as a whole. I will say it once again: we are in difficult and dangerous times. In order to meet their public safety obligations during this period, elected officials at all levels of government must work to create and maintain an environment that enables police officers to meet any challenge they encounter. But certainly, they should not be making matters worse, and unfortunately the actions and inactions by some of our elected leaders up to this point have done exactly that. We have seen some hopeful signs recently that this may be changing here in New York City, but our police officers still need the words of support to be backed up by meaningful and consistent actions.

The public safety interests of this City are advanced when police officers are respected, when their safety is protected, and when they are treated fairly. It is only by doing these things that we will be able to attract, retain and motivate an adequate force of high-quality police officers. We cannot delay in acting on these goals, because New York City police officers, and those who would consider taking this job, are watching.

Public safety must remain a top priority for New York City and New York State, and how we go about implementing that priority is ultimately the decision of policymakers such as yourselves. But we believe that public safety cannot not be maintained by a government that does not support its police officers, that besieges them with criticism and ill-considered oversight, that subjects them to unprecedented and unwarranted levels of discipline and relegates them to a different and more burdensome system of justice. Most importantly, we cannot expect our police officers to effectively protect us unless we do everything in our power to protect them.

We believe the proposals and measures we have outlined will serve to maintain and increase the safety of police officers and enhance public safety as a whole. There may be other concerns that we have not addressed in this forum; if that is the case, we will be raising them in the course of this legislative session. I ask once again that you give all of these proposals your support, and I thank you once again for hearing and considering my testimony.