

6329

2009-2010 Regular Sessions

I N S E N A T E

December 7, 2009

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to ethnic or racial profiling

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 "Marvin's law".

3 S 2. The executive law is amended by adding a new section 837-s to
4 read as follows:

5 S 837-S. ETHNIC AND RACIAL PROFILING. 1. FOR THE PURPOSES OF THIS
6 SECTION:

7 (A) "LAW ENFORCEMENT AGENCY" MEANS AN AGENCY ESTABLISHED BY THE STATE
8 OR A UNIT OF LOCAL GOVERNMENT WHICH EMPLOYS POLICE OFFICERS OR PEACE
9 OFFICERS WHO ARE EMPOWERED TO AND IN THE COURSE OF THEIR OFFICIAL DUTIES
10 LAWFULLY STOP MOTOR VEHICLES OR STOP AND FRISK INDIVIDUALS.

11 (B) "LAW ENFORCEMENT OFFICER" MEANS A POLICE OFFICER OR PEACE OFFICER
12 EMPLOYED BY A LAW ENFORCEMENT AGENCY.

13 (C) "RACIAL OR ETHNIC PROFILING" MEANS THE STOPPING OF A MOTOR VEHI-
14 CLE, THE STOPPING AND QUESTIONING OF AN INDIVIDUAL OR THE STOPPING AND
15 FRISKING OF AN INDIVIDUAL BY A LAW ENFORCEMENT OFFICER THAT IS BASED
16 UPON AN INDIVIDUAL'S ACTUAL OR APPARENT RACIAL OR ETHNIC STATUS WITHOUT
17 REASONABLE INDIVIDUALIZED SUSPICION OR CAUSE TO LAWFULLY JUSTIFY SUCH
18 CONDUCT.

19 2. EVERY LAW ENFORCEMENT AGENCY AND EVERY LAW ENFORCEMENT OFFICER
20 SHALL BE PROHIBITED FROM ENGAGING IN RACIAL OR ETHNIC PROFILING.

21 3. ON OR BEFORE JANUARY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF
22 THIS SECTION, EVERY LAW ENFORCEMENT AGENCY SHALL PROMULGATE AND ADOPT A
23 WRITTEN POLICY WHICH PROHIBITS RACIAL OR ETHNIC PROFILING. IN ADDITION,
24 EACH SUCH AGENCY SHALL PROMULGATE AND ADOPT PROCEDURES FOR THE REVIEW
25 AND THE TAKING OF CORRECTIVE ACTION WITH RESPECT TO COMPLAINTS BY INDI-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04443-01-9

VIDUALS WHO ALLEGE THAT THEY HAVE BEEN THE SUBJECT OF RACIAL OR ETHNIC PROFILING. A COPY OF EACH SUCH COMPLAINT RECEIVED PURSUANT TO THIS SECTION AND WRITTEN NOTIFICATION OF THE REVIEW AND DISPOSITION OF SUCH COMPLAINT SHALL BE PROMPTLY PROVIDED BY SUCH AGENCY TO THE DIVISION OF CRIMINAL JUSTICE SERVICES.

4. COMMENCING ON JANUARY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION, EACH LAW ENFORCEMENT AGENCY SHALL, USING A FORM TO BE DETERMINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES, RECORD AND RETAIN THE FOLLOWING INFORMATION WITH RESPECT TO LAW ENFORCEMENT OFFICERS EMPLOYED BY SUCH AGENCY:

(A) THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS AND THE NUMBER OF PERSONS PATTED DOWN, FRISKED AND SEARCHED;

(B) THE CHARACTERISTICS OF RACE, COLOR, ETHNICITY, GENDER AND AGE OF EACH SUCH PERSON, PROVIDED THE IDENTIFICATION OF SUCH CHARACTERISTICS SHALL BE BASED ON THE OBSERVATION AND PERCEPTION OF THE OFFICER RESPONSIBLE FOR REPORTING THE STOP AND THE INFORMATION SHALL NOT BE REQUIRED TO BE PROVIDED BY THE PERSON STOPPED;

(C) IF A VEHICLE WAS STOPPED, THE NUMBER OF INDIVIDUALS IN THE STOPPED MOTOR VEHICLE;

(D) WHETHER IMMIGRATION STATUS WAS QUESTIONED, IMMIGRATION DOCUMENTS REQUESTED, AND IF ANY FURTHER INQUIRY WAS MADE TO THE IMMIGRATION AND NATURALIZATION SERVICE WITH RESPECT TO ANY PERSON STOPPED OR IN THE MOTOR VEHICLE;

(E) THE NATURE OF THE ALLEGED TRAFFIC VIOLATION THAT RESULTED IN THE STOP OR THE BASIS FOR THE CONDUCT THAT RESULTED IN THE INDIVIDUAL BEING STOPPED AND FRISKED OR SEARCHED;

(F) WHETHER A SEARCH WAS CONDUCTED AND, IF SO, THE RESULT OF THE SEARCH;

(G) IF A SEARCH WAS CONDUCTED, WHETHER THE SEARCH WAS OF A PERSON OR THE PERSON'S PROPERTY, AND WHETHER THE SEARCH WAS CONDUCTED PURSUANT TO CONSENT AND IF NOT, THE BASIS FOR CONDUCTING THE SEARCH INCLUDING ANY ALLEGED CRIMINAL BEHAVIOR THAT JUSTIFIED THE SEARCH;

(H) WHETHER A WARNING OR CITATION WAS ISSUED;

(I) WHETHER AN ARREST WAS MADE AND FOR WHAT CHARGE;

(J) THE APPROXIMATE DURATION OF THE STOP; AND

(K) THE TIME AND LOCATION OF THE STOP.

5. EVERY LAW ENFORCEMENT AGENCY SHALL COMPILE THE INFORMATION SET FORTH IN SUBDIVISION FOUR OF THIS SECTION FOR THE CALENDAR YEAR INTO A REPORT TO THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE FORMAT OF SUCH REPORT SHALL BE DETERMINED BY SUCH DIVISION. THE REPORT SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES NO LATER THAN MARCH FIRST OF THE FOLLOWING CALENDAR YEAR.

6. NOT LATER THAN JANUARY FIRST NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION, THE DIVISION OF CRIMINAL JUSTICE SERVICES, IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL DEVELOP AND PROMULGATE:

(A) A FORM IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED BY LAW ENFORCEMENT OFFICERS TO RECORD THE INFORMATION LISTED IN SUBDIVISION FOUR OF THIS SECTION WHEN MAKING A TRAFFIC STOP OR WHEN STOPPING AND FRISKING AN INDIVIDUAL; AND

(B) A FORM TO BE USED TO REPORT COMPLAINTS PURSUANT TO SUBDIVISION THREE OF THIS SECTION BY INDIVIDUALS WHO BELIEVE THEY HAVE BEEN SUBJECTED TO RACIAL OR ETHNIC PROFILING.

7. EVERY LAW ENFORCEMENT AGENCY SHALL MAKE AVAILABLE TO THE ATTORNEY GENERAL, UPON FIVE DAYS DEMAND AND NOTICE, THE DOCUMENTS REQUIRED TO BE PRODUCED AND PROMULGATED PURSUANT TO SUBDIVISIONS THREE, FOUR AND FIVE OF THIS SECTION.

1 8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION
2 COLLECTED FROM TRAFFIC STOPS TO THE DIVISION OF CRIMINAL JUSTICE
3 SERVICES. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL DEVELOP AND
4 IMPLEMENT A PLAN FOR A COMPUTERIZED DATA SYSTEM FOR PUBLIC VIEWING OF
5 SUCH DATA AND SHALL PUBLISH AN ANNUAL REPORT ON DATA COLLECTED FOR THE
6 GOVERNOR, THE LEGISLATURE, AND THE PUBLIC ON LAW ENFORCEMENT TRAFFIC
7 STOPS. INFORMATION RELEASED SHALL NOT REVEAL THE IDENTITY OF ANY INDI-
8 VIDUAL.

9 9. THE ATTORNEY GENERAL MAY BRING AN ACTION ON BEHALF OF THE PEOPLE
10 FOR INJUNCTIVE RELIEF AND/OR DAMAGES AGAINST A LAW ENFORCEMENT AGENCY
11 THAT IS ENGAGING IN OR HAS ENGAGED IN AN ACT OR ACTS OF RACIAL PROFILING
12 IN A COURT HAVING JURISDICTION TO ISSUE SUCH RELIEF. THE COURT MAY AWARD
13 COSTS AND REASONABLE ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS IN SUCH
14 AN ACTION.

15 10. IN ADDITION TO A CAUSE OF ACTION BROUGHT PURSUANT TO SUBDIVISION
16 NINE OF THIS SECTION, AN INDIVIDUAL WHO HAS BEEN THE SUBJECT OF AN ACT
17 OR ACTS OF RACIAL PROFILING MAY BRING AN ACTION FOR INJUNCTIVE RELIEF
18 AND/OR DAMAGES AGAINST A LAW ENFORCEMENT AGENCY THAT IS ENGAGED IN OR
19 HAS ENGAGED IN AN ACT OR ACTS OF RACIAL PROFILING. THE COURT MAY AWARD
20 COSTS AND REASONABLE ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS IN SUCH
21 AN ACTION.

22 11. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS DIMINISHING OR ABRO-
23 GATING ANY RIGHT, REMEDY OR CAUSE OF ACTION WHICH AN INDIVIDUAL WHO HAS
24 BEEN SUBJECT TO RACIAL OR ETHNIC PROFILING MAY HAVE PURSUANT TO ANY
25 OTHER PROVISION OF LAW.

26 S 3. This act shall take effect on the ninetieth day after it shall
27 have become a law; provided, however, that effective immediately, the
28 addition, amendment and/or repeal of any rule or regulation necessary
29 for the implementation of this act on its effective date is authorized
30 and directed to be made and completed on or before such effective date.