

1872

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

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

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

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

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

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

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

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

19 3. ON OR BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, EVERY LAW
20 ENFORCEMENT AGENCY SHALL PROMULGATE AND ADOPT A WRITTEN POLICY WHICH
21 PROHIBITS RACIAL OR ETHNIC PROFILING. IN ADDITION, EACH SUCH AGENCY
22 SHALL PROMULGATE AND ADOPT PROCEDURES FOR THE REVIEW AND THE TAKING OF
23 CORRECTIVE ACTION WITH RESPECT TO COMPLAINTS BY INDIVIDUALS WHO ALLEGE
24 THAT THEY HAVE BEEN THE SUBJECT OF RACIAL OR ETHNIC PROFILING. A COPY OF
25 EACH SUCH COMPLAINT RECEIVED PURSUANT TO THIS SECTION AND WRITTEN

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

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1 NOTIFICATION OF THE REVIEW AND DISPOSITION OF SUCH COMPLAINT SHALL BE
2 PROMPTLY PROVIDED BY SUCH AGENCY TO THE DIVISION.

3 4. COMMENCING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, EACH LAW
4 ENFORCEMENT AGENCY SHALL, USING A FORM TO BE DETERMINED BY THE DIVISION,
5 RECORD AND RETAIN THE FOLLOWING INFORMATION WITH RESPECT TO LAW ENFORCE-
6 MENT OFFICERS EMPLOYED BY SUCH AGENCY:

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

9 (B) THE CHARACTERISTICS OF RACE, COLOR, ETHNICITY, GENDER AND AGE OF
10 EACH SUCH PERSON, PROVIDED THE IDENTIFICATION OF SUCH CHARACTERISTICS
11 SHALL BE BASED ON THE OBSERVATION AND PERCEPTION OF THE OFFICER RESPON-
12 SIBLE FOR REPORTING THE STOP AND THE INFORMATION SHALL NOT BE REQUIRED
13 TO BE PROVIDED BY THE PERSON STOPPED;

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

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

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

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

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

29 (H) WHETHER A WARNING OR CITATION WAS ISSUED;

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

31 (J) THE APPROXIMATE DURATION OF THE STOP; AND

32 (K) THE TIME AND LOCATION OF THE STOP.

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

38 6. NOT LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN, THE DIVISION,
39 IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL DEVELOP AND PROMULGATE:

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

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

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

51 8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION
52 COLLECTED FROM TRAFFIC STOPS TO THE DIVISION. THE DIVISION OF CRIMINAL
53 JUSTICE SERVICES SHALL DEVELOP AND IMPLEMENT A PLAN FOR A COMPUTERIZED
54 DATA SYSTEM FOR PUBLIC VIEWING OF SUCH DATA AND SHALL PUBLISH AN ANNUAL
55 REPORT ON DATA COLLECTED FOR THE GOVERNOR, THE LEGISLATURE, AND THE

1 PUBLIC ON LAW ENFORCEMENT TRAFFIC STOPS. INFORMATION RELEASED SHALL NOT
2 REVEAL THE IDENTITY OF ANY INDIVIDUAL.

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

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

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

20 S 2. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law; provided, however, that effective immediate-
22 ly, the addition, amendment and/or repeal of any rule or regulation
23 necessary for the implementation of this act on its effective date is
24 authorized and directed to be made and completed on or before such
25 effective date.