S T A T E O F N E W Y O R K

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I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, ROBINSON, McENENY, J. RIVERA, GANTT, JEFFRIES, JAFFEE, TITUS, POWELL -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CLARK, FARRELL, HEASTIE, HOOPER, JACOBS, JOHN, V. LOPEZ, PEOPLES-STOKES, SCARBOROUGH, TITONE, TOWNS -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

Section 1. The executive law is amended by adding a new section 837-s to read as follows:

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

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

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

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

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

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

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3. ON OR BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, EVERY LAW ENFORCEMENT AGENCY SHALL PROMULGATE AND ADOPT A WRITTEN POLICY WHICH PROHIBITS RACIAL OR ETHNIC PROFILING. IN ADDITION, EACH SUCH AGENCY SHALL PROMULGATE AND ADOPT PROCEDURES FOR THE REVIEW AND THE TAKING OF CORRECTIVE ACTION WITH RESPECT TO COMPLAINTS BY INDIVIDUALS 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.

4. COMMENCING ON JANUARY FIRST, TWO THOUSAND TWELVE, EACH LAW ENFORCEMENT AGENCY SHALL, USING A FORM TO BE DETERMINED BY THE DIVISION, 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 STOPPED WHERE SUCH STOP RESULTED IN A PERSON BEING PATTED DOWN, FRISKED AND/OR 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 PATTED DOWN, FRISKED AND/OR SEARCHED;

(F) WHETHER A PAT DOWN OR FRISK WAS CONDUCTED AND, IF SO, THE RESULT OF THE PAT DOWN OR FRISK;

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

(H) IF A SEARCH WAS CONDUCTED, WHETHER THE SEARCH WAS OF A PERSON, A PERSON'S PROPERTY, AND/OR A PERSON'S VEHICLE, 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;

(I) WHETHER AN INVENTORY SEARCH OF SUCH PERSON'S IMPOUNDED VEHICLE WAS CONDUCTED;

(J) WHETHER A WARNING OR CITATION WAS ISSUED;

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

(L) THE APPROXIMATE DURATION OF THE STOP; AND

(M) 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. THE FORMAT OF SUCH REPORT SHALL BE DETERMINED BY THE DIVISION. THE REPORT SHALL BE SUBMITTED TO THE DIVISION NO LATER THAN MARCH FIRST OF THE FOLLOWING CALENDAR YEAR.

6. NOT LATER THAN JANUARY FIRST, TWO THOUSAND TWELVE, THE DIVISION, 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.

8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION COLLECTED FROM TRAFFIC STOPS TO THE DIVISION. THE DIVISION SHALL DEVELOP AND IMPLEMENT A PLAN FOR A COMPUTERIZED DATA SYSTEM FOR PUBLIC VIEWING OF SUCH DATA AND SHALL PUBLISH AN ANNUAL REPORT ON DATA COLLECTED FOR THE GOVERNOR, THE LEGISLATURE, AND THE PUBLIC ON LAW ENFORCEMENT TRAFFIC STOPS. INFORMATION RELEASED SHALL NOT REVEAL THE IDENTITY OF ANY INDIVIDUAL.

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

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

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

S 2. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.