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

6690

I N S E N A T E

January 27, 2010

Introduced by Sens. LEIBELL, MAZIARZ, MORAHAN, PADAVAN, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

AN ACT to amend the executive law and the penal law, in relation to the prevention of terrorist attacks; and providing for the repeal of such provisions upon the expiration thereof

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

Section 1. Legislative findings. The legislature finds and declares that preventing terrorist attacks on our citizens - including not only possible deaths and injuries, but also crushing economic harm or even chaos - is a compelling governmental interest.

The legislature further finds and declares that since both law enforcement resources and the time necessary to make an initial decision regarding stopping and questioning are very limited, this compelling governmental interest demands that law enforcement must be afforded the means of identification of potential terrorist suspects as effectively and efficiently as possible so that they may be stopped, questioned, frisked, and/or searched.

The legislature also finds and declares that homeland security experts have suggested that, while no one single factor is definitive, a wide variety of factors, such as the following, can help identify potential terrorism suspects:

1. wearing heavy clothing in warm weather;

2. carrying a briefcase, duffle bag or backpack with protrusions or visible wires;

3. displaying nervousness and/or inappropriate sweating;

4. an inability or unwillingness to make eye contact;

5. chemical burns on clothing or stains on hands.

For this reason, law enforcement personnel are often asked to look for and consider such factors in determining which persons to stop, question, frisk and/or search.

The legislature additionally finds and declares that many homeland security experts have suggested, and the history of modern terrorism has

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

LBD15354-03-0

confirmed, that the national origin of a person can also be a very important, if not crucial factor, along with others, in identifying potential terrorist suspects. Accordingly, homeland security experts have suggested, and such experience has confirmed, that many terrorist acts are performed by radical individuals with national origins from countries such as Afghanistan, Pakistan, Iran, Syria, Yemen, Lebanon, Iraq, Egypt, Saudi Arabia, Libya, Nigeria, Somalia, Algeria, Russia, Peru, Philippines, Mali, Indonesia, and Malaysia. As a result, the use of ethnicity serves a compelling governmental interest in helping law enforcement personnel to determine effectively and efficiently, along with other factors, which persons to stop, question, frisk and/or search.

The legislature further finds and determines, that the good faith questioning or searching of a suspicious terrorist suspect, has only momentary consequences for innocent persons, and can prevent monumental and enormous public harm and injury, unlike other governmental decisions upheld by the Supreme Court of the United States, which have lasting and very significant adverse consequences for the compelling interest use of ethnic or racial decisions.

Therefore, the legislature finds that, in the interest of ensuring the most effective terrorist prevention which meets United States and New York State constitutional protections, it is necessary to enact a law which will authorize law enforcement personnel to consider national origin as one of many factors which could be used in identifying persons who can be initially stopped, questioned, frisked and/or searched.

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

S 837-S. POTENTIAL TERRORIST SUSPECT PROFILE. 1. FOR PURPOSES OF THIS SECTION, "POTENTIAL TERRORIST SUSPECT PROFILE" SHALL MEAN MULTIPLE FACTORS WHICH DETERMINE THE EXISTENCE OF A REASONABLE INDIVIDUALIZED SUSPICION AND/OR PROBABLE CAUSE AND PROVIDE CAUSE FOR A PEACE OFFICER OR POLICE OFFICER TO LAWFULLY JUSTIFY THE STOPPING OF A MOTOR VEHICLE, THE STOPPING AND QUESTIONING OF AN INDIVIDUAL, AND/OR THE STOPPING AND FRISKING OF AN INDIVIDUAL, IN FURTHERANCE OF THE GOVERNMENT'S COMPELLING INTEREST IN DETERRING TERRORIST ATTACKS. ONE OF THESE FACTORS MAY BE THE NATIONAL ORIGIN OF THE INDIVIDUAL, PARTICULARLY A GOOD FAITH SUSPICION THAT THE INDIVIDUAL TO BE STOPPED, QUESTIONED, FRISKED OR SEARCHED HAS TIES TO ANY COUNTRY WHICH HAS HAD A HISTORY OF MAINTAINING A TERRORIST ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, AFGHANISTAN, PAKISTAN, IRAN, SYRIA, YEMEN, LEBANON, IRAQ, EGYPT, SAUDI ARABIA, LIBYA, NIGERIA, SOMALIA, ALGERIA, RUSSIA, PERU, PHILIPPINES, MALI, INDONESIA, OR MALAYSIA.

2. FOR PURPOSES OF THIS SECTION "NATIONAL ORIGIN" SHALL INCLUDE "ANCESTRY".

3. NOTWITHSTANDING ANY STATE OR LOCAL LAW, RULE OR REGULATION TO THE CONTRARY, A PEACE OFFICER OR POLICE OFFICER, AS DEFINED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, MAY CONSIDER THE NATIONAL ORIGIN OF A SUSPECT AS ONE OF MANY FACTORS IN A POTENTIAL TERRORIST SUSPECT PROFILE WHICH HE OR SHE COULD USE TO IDENTIFY PERSONS WHO COULD BE STOPPED, QUESTIONED, FRISKED AND/OR SEARCHED IN FURTHERANCE OF THE GOVERNMENT'S COMPELLING INTEREST IN DETERRING TERRORIST ATTACKS; PROVIDED, HOWEVER, THAT SUCH NATIONAL ORIGIN MAY NOT BE THE SOLE CRITERIA UTILIZED FOR MAKING THE DECISION. RATHER, THE NATIONAL ORIGIN OF THE INDIVIDUAL MAY BE UTILIZED AS ONLY ONE OF SEVERAL FACTORS, AND SUCH PEACE OFFICERS OR POLICE OFFICERS SHALL ENGAGE IN A HIGHLY INDIVIDUALIZED, HOLISTIC CONSIDERATION OF EACH PERSON'S TOTALITY OF CHARACTERISTICS AND FACTORS

IN CARRYING OUT HIS OR HER LAW ENFORCEMENT FUNCTIONS, INCLUDING DETERMINING WHOM TO STOP, QUESTION, FRISK AND/OR SEARCH.

S 3. The penal law is amended by adding a new section 490.02 to read as follows:

S 490.02 LIABILITY PROTECTION FOR NATIONAL ORIGIN PROFILING.

1. ANY PERSON WHO STOPS, QUESTIONS, FRISKS OR SEARCHES AN INDIVIDUAL, WITH THE INTENTION OF PREVENTING AN ACT OF TERRORISM, UPON A GOOD FAITH SUSPICION THAT THE INDIVIDUAL TO BE STOPPED, QUESTIONED, FRISKED OR SEARCHED, HAS TIES TO ANY COUNTRY WHICH HAS HAD A HISTORY OF MAINTAINING A TERRORIST ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, AFGHANISTAN, PAKISTAN, IRAN, SYRIA, YEMEN, LEBANON, IRAQ, EGYPT, SAUDI ARABIA, LIBYA, NIGERIA, SOMALIA, ALGERIA, RUSSIA, PERU, PHILIPPINES, MALI, INDONESIA, OR MALAYSIA, SHALL BE IMMUNE FROM CIVIL AND CRIMINAL LIABILITY FOR SUCH STOP, QUESTIONING, FRISK OR SEARCH.

2. AN ACTION ALLEGING THAT A STOP, QUESTIONING, FRISK OR SEARCH BY A PERSON OF AN INDIVIDUAL, WITH THE INTENTION OF PREVENTING AN ACT OF TERRORISM, UPON A GOOD FAITH SUSPICION THAT THE INDIVIDUAL TO BE STOPPED, QUESTIONED, FRISKED OR SEARCHED, HAS TIES TO ANY COUNTRY WHICH HAS HAD A HISTORY OF MAINTAINING A TERRORIST ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, AFGHANISTAN, PAKISTAN, IRAN, SYRIA, YEMEN, LEBANON, IRAQ, EGYPT, SAUDI ARABIA, LIBYA, NIGERIA, SOMALIA, ALGERIA, RUSSIA, PERU, PHILIPPINES, MALI, INDONESIA, OR MALAYSIA, WAS NOT MADE IN GOOD FAITH, MUST BE PLED WITH PARTICULARITY PURSUANT TO SUBDIVISION (B) OF RULE THREE THOUSAND SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES.

S 4. This act shall take effect immediately and shall expire and be deemed repealed 5 years after such date.