

3546

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. PERRY, CLARK, POWELL, ALFANO -- Multi-Sponsored  
by -- M. of A. DIAZ, ESPAILLAT, GREENE, HOOPER, MENG, PEOPLES,  
J. RIVERA, TOWNS -- read once and referred to the Committee on Govern-  
mental Operations

AN ACT to amend the executive law, in relation to traffic stops  
conducted by law enforcement officers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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. PROHIBITION OF RACIAL PROFILING IN TRAFFIC STOPS. 1. FOR THE  
4 PURPOSES OF THIS SECTION, "RACIAL PROFILING" MEANS THE DETENTION, INTER-  
5 DICTION OR OTHER DISPARATE TREATMENT OF AN INDIVIDUAL SOLELY ON THE  
6 BASIS OF THE RACIAL OR ETHNIC STATUS OF SUCH INDIVIDUAL.

7 2. NO MEMBER OF THE DIVISION OF STATE POLICE, A SHERIFF'S OFFICE, A  
8 MUNICIPAL POLICE DEPARTMENT OR ANY OTHER LAW ENFORCEMENT AGENCY SHALL  
9 ENGAGE IN RACIAL PROFILING. THE DETENTION OF AN INDIVIDUAL BASED ON ANY  
10 NONCRIMINAL FACTOR OR COMBINATION OF NONCRIMINAL FACTORS IS INCONSISTENT  
11 WITH THIS POLICY.

12 3. THE RACE OR ETHNICITY OF AN INDIVIDUAL SHALL NOT BE THE SOLE FACTOR  
13 IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE TO PLACE IN CUSTODY OR  
14 ARREST AN INDIVIDUAL OR IN CONSTITUTING A REASONABLE AND ARTICULABLE  
15 SUSPICION THAT AN OFFENSE HAS BEEN OR IS BEING COMMITTED SO AS TO JUSTI-  
16 FY THE DETENTION OF AN INDIVIDUAL OR THE INVESTIGATORY STOP OF A MOTOR  
17 VEHICLE.

18 4. (A) NOT LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN, EACH MUNICI-  
19 PAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE  
20 POLICE SHALL ADOPT A WRITTEN POLICY THAT PROHIBITS THE STOPPING,  
21 DETENTION OR SEARCH OF ANY PERSON WHEN SUCH ACTION IS SOLELY MOTIVATED  
22 BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, AGE, GENDER OR SEXUAL  
23 ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL  
24 RIGHTS OF THE PERSON.

25 (B) COMMENCING ON JANUARY FIRST, TWO THOUSAND ELEVEN, EACH MUNICIPAL  
26 POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE

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

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1 SHALL, USING THE FORM DEVELOPED AND PROMULGATED PURSUANT TO SUBDIVISION  
2 FIVE OF THIS SECTION, RECORD AND RETAIN THE FOLLOWING INFORMATION: (I)  
3 THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS; (II) CHARACTER-  
4 ISTICS OF RACE, COLOR, ETHNICITY, GENDER AND AGE OF SUCH PERSONS,  
5 PROVIDED THE IDENTIFICATION OF SUCH CHARACTERISTICS SHALL BE BASED ON  
6 THE OBSERVATION AND PERCEPTION OF THE POLICE OFFICER RESPONSIBLE FOR  
7 REPORTING THE STOP AND THE INFORMATION SHALL NOT BE REQUIRED TO BE  
8 PROVIDED BY THE PERSON STOPPED; (III) THE NATURE OF THE ALLEGED TRAFFIC  
9 VIOLATION THAT RESULTED IN THE STOP; (IV) WHETHER A WARNING OR CITATION  
10 WAS ISSUED, AN ARREST MADE OR A SEARCH CONDUCTED AS A RESULT OF THE  
11 STOP; AND (V) ANY ADDITIONAL INFORMATION THAT SUCH MUNICIPAL POLICE  
12 DEPARTMENT, SHERIFF'S OFFICE, OR THE DIVISION OF STATE POLICE, AS THE  
13 CASE MAY BE, DEEMS APPROPRIATE.

14 (C) EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVI-  
15 SION OF STATE POLICE SHALL PROVIDE TO THE DIVISION OF CRIMINAL JUSTICE  
16 SERVICES (I) A COPY OF EACH COMPLAINT RECEIVED PURSUANT TO THIS SECTION,  
17 AND (II) WRITTEN NOTIFICATION OF THE REVIEW AND DISPOSITION OF SUCH  
18 COMPLAINT.

19 (D) ANY POLICE OFFICER WHO IN GOOD FAITH RECORDS TRAFFIC STOP INFORMA-  
20 TION PURSUANT TO THE REQUIREMENTS OF THIS SECTION SHALL NOT BE HELD  
21 CIVILLY LIABLE FOR THE ACT OF RECORDING SUCH INFORMATION UNLESS THE  
22 OFFICER'S CONDUCT WAS UNREASONABLE OR RECKLESS.

23 (E) IF A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, OR THE DIVI-  
24 SION OF STATE POLICE FAILS TO COMPLY WITH THE PROVISIONS OF THIS  
25 SECTION, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ORDER AN APPRO-  
26 PRIATE PENALTY IN THE FORM OF THE WITHHOLDING OF STATE FUNDS FROM SUCH  
27 MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE OR THE DIVISION OF STATE  
28 POLICE.

29 (F) ON OR BEFORE OCTOBER FIRST, TWO THOUSAND ELEVEN, AND ANNUALLY  
30 THEREAFTER, EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE AND THE  
31 DIVISION OF STATE POLICE SHALL PROVIDE TO THE DIVISION OF CRIMINAL  
32 JUSTICE SERVICES, IN SUCH FORM AS THE DIVISION OF CRIMINAL JUSTICE  
33 SERVICES SHALL PRESCRIBE, A SUMMARY REPORT OF THE INFORMATION RECORDED  
34 PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.

35 (G) THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE FOR A  
36 REVIEW OF THE PREVALENCE AND DISPOSITION OF TRAFFIC STOPS AND COMPLAINTS  
37 REPORTED PURSUANT TO THIS SECTION. NOT LATER THAN JANUARY FIRST, TWO  
38 THOUSAND TWELVE, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL REPORT  
39 TO THE GOVERNOR AND THE SENATE AND THE ASSEMBLY THE RESULTS OF SUCH  
40 REVIEW, INCLUDING ANY RECOMMENDATIONS.

41 5. NOT LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN, THE DIVISION OF  
42 CRIMINAL JUSTICE SERVICES SHALL DEVELOP AND PROMULGATE:

43 (A) A FORM, IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED BY  
44 POLICE OFFICERS WHEN MAKING A TRAFFIC STOP TO RECORD PERSONAL IDENTIFY-  
45 ING INFORMATION ABOUT THE OPERATOR OF THE MOTOR VEHICLE THAT IS STOPPED,  
46 THE LOCATION OF THE STOP, THE REASON FOR THE STOP AND OTHER INFORMATION  
47 THAT IS REQUIRED TO BE RECORDED PURSUANT TO PARAGRAPH (B) OF SUBDIVISION  
48 FOUR OF THIS SECTION; AND

49 (B) A FORM, IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED TO  
50 REPORT COMPLAINTS PURSUANT TO SUBDIVISION FOUR OF THIS SECTION BY  
51 PERSONS WHO BELIEVE THEY HAVE BEEN SUBJECTED TO A MOTOR VEHICLE STOP BY  
52 A POLICE OFFICER SOLELY ON THE BASIS OF THEIR RACE, COLOR, ETHNICITY,  
53 AGE, GENDER OR SEXUAL ORIENTATION.

54 S 2. This act shall take effect immediately.