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

3546--A

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. ESPAILLAT, HOOPER, MENG, PEOPLES-STOKES, J. RIVERA, TOWNS -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 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. PROHIBITION OF RACIAL PROFILING IN TRAFFIC STOPS. 1. FOR THE PURPOSES OF THIS SECTION, "RACIAL PROFILING" MEANS THE DETENTION, INTERDICTION OR OTHER DISPARATE TREATMENT OF AN INDIVIDUAL SOLELY ON THE BASIS OF THE RACIAL OR ETHNIC STATUS OF SUCH INDIVIDUAL.

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

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

4. (A) NOT LATER THAN JANUARY FIRST, TWO THOUSAND TWELVE, EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE SHALL ADOPT A WRITTEN POLICY THAT PROHIBITS THE STOPPING,

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

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DETENTION OR SEARCH OF ANY PERSON WHEN SUCH ACTION IS SOLELY MOTIVATED BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, AGE, GENDER OR SEXUAL ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS OF THE PERSON.

(B) COMMENCING ON JANUARY FIRST, TWO THOUSAND TWELVE, EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE SHALL, USING THE FORM DEVELOPED AND PROMULGATED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, RECORD AND RETAIN THE FOLLOWING INFORMATION: (I) THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS; (II) CHARACTERISTICS OF RACE, COLOR, ETHNICITY, GENDER AND AGE OF SUCH PERSONS, PROVIDED THE IDENTIFICATION OF SUCH CHARACTERISTICS SHALL BE BASED ON THE OBSERVATION AND PERCEPTION OF THE POLICE OFFICER RESPONSIBLE FOR REPORTING THE STOP AND THE INFORMATION SHALL NOT BE REQUIRED TO BE PROVIDED BY THE PERSON STOPPED; (III) THE NATURE OF THE ALLEGED TRAFFIC VIOLATION THAT RESULTED IN THE STOP; (IV) WHETHER A WARNING OR CITATION WAS ISSUED, AN ARREST MADE OR A SEARCH CONDUCTED AS A RESULT OF THE STOP; AND (V) ANY ADDITIONAL INFORMATION THAT SUCH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, OR THE DIVISION OF STATE POLICE, AS THE CASE MAY BE, DEEMS APPROPRIATE.

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

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

(E) IF A MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, OR THE DIVISION OF STATE POLICE FAILS TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ORDER AN APPROPRIATE PENALTY IN THE FORM OF THE WITHHOLDING OF STATE FUNDS FROM SUCH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE OR THE DIVISION OF STATE POLICE.

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

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

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

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

(B) A FORM, IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED TO REPORT COMPLAINTS PURSUANT TO SUBDIVISION FOUR OF THIS SECTION BY

PERSONS WHO BELIEVE THEY HAVE BEEN SUBJECTED TO A MOTOR VEHICLE STOP BY A POLICE OFFICER SOLELY ON THE BASIS OF THEIR RACE, COLOR, ETHNICITY, AGE, GENDER OR SEXUAL ORIENTATION.

S 2. This act shall take effect immediately.