

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. SAMPSON -- 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 ELEVEN, EVERY LAW ENFORCE-  
20 MENT AGENCY SHALL PROMULGATE AND ADOPT A WRITTEN POLICY WHICH PROHIBITS  
21 RACIAL OR ETHNIC PROFILING. IN ADDITION, EACH SUCH AGENCY SHALL PROMUL-  
22 GATE AND ADOPT PROCEDURES FOR THE REVIEW AND THE TAKING OF CORRECTIVE  
23 ACTION WITH RESPECT TO COMPLAINTS BY INDIVIDUALS WHO ALLEGE THAT THEY  
24 HAVE BEEN THE SUBJECT OF RACIAL OR ETHNIC PROFILING. A COPY OF EACH SUCH

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

1 COMPLAINT RECEIVED PURSUANT TO THIS SECTION AND WRITTEN NOTIFICATION OF  
2 THE REVIEW AND DISPOSITION OF SUCH COMPLAINT SHALL BE PROMPTLY PROVIDED  
3 BY SUCH AGENCY TO THE DIVISION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION  
53 COLLECTED FROM TRAFFIC STOPS TO THE DIVISION. THE DIVISION OF CRIMINAL  
54 JUSTICE SERVICES SHALL DEVELOP AND IMPLEMENT A PLAN FOR A COMPUTERIZED  
55 DATA SYSTEM FOR PUBLIC VIEWING OF SUCH DATA AND SHALL PUBLISH AN ANNUAL  
56 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 thirtieth day after it shall  
21 have become a law; provided, however, that effective immediately, the  
22 addition, amendment and/or repeal of any rule or regulation necessary  
23 for the implementation of this act on its effective date is authorized  
24 and directed to be made and completed on or before such effective date.