

2288

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. WRIGHT, ROBINSON, McENENY, J. RIVERA, GANTT, JEFFRIES, JAFFEE, TITUS -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, CLARK, FARRELL, HEASTIE, HOOPER, JACOBS, V. LOPEZ, PEOPLES-STOKES, SCARBOROUGH, TITONE, TOWNS -- read once and referred to the Committee on Codes

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 FOURTEEN, EVERY LAW
20 ENFORCEMENT AGENCY SHALL PROMULGATE AND ADOPT A WRITTEN POLICY WHICH
21 PROHIBITS RACIAL OR ETHNIC PROFILING. IN ADDITION, EACH SUCH AGENCY
22 SHALL PROMULGATE AND ADOPT PROCEDURES FOR THE REVIEW AND THE TAKING OF

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

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1 CORRECTIVE ACTION WITH RESPECT TO COMPLAINTS BY INDIVIDUALS WHO ALLEGE
2 THAT THEY HAVE BEEN THE SUBJECT OF RACIAL OR ETHNIC PROFILING. A COPY OF
3 EACH SUCH COMPLAINT RECEIVED PURSUANT TO THIS SECTION AND WRITTEN
4 NOTIFICATION OF THE REVIEW AND DISPOSITION OF SUCH COMPLAINT SHALL BE
5 PROMPTLY PROVIDED BY SUCH AGENCY TO THE DIVISION.

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

10 (A) THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS AND THE
11 NUMBER OF PERSONS STOPPED WHERE SUCH STOP RESULTED IN A PERSON BEING
12 PATTED DOWN, FRISKED AND/OR SEARCHED;

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

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

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

24 (E) THE NATURE OF THE ALLEGED TRAFFIC VIOLATION THAT RESULTED IN THE
25 STOP OR THE BASIS FOR THE CONDUCT THAT RESULTED IN THE INDIVIDUAL BEING
26 STOPPED AND PATTED DOWN, FRISKED AND/OR SEARCHED;

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

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

31 (H) IF A SEARCH WAS CONDUCTED, WHETHER THE SEARCH WAS OF A PERSON, A
32 PERSON'S PROPERTY, AND/OR A PERSON'S VEHICLE, AND WHETHER THE SEARCH WAS
33 CONDUCTED PURSUANT TO CONSENT AND IF NOT, THE BASIS FOR CONDUCTING THE
34 SEARCH INCLUDING ANY ALLEGED CRIMINAL BEHAVIOR THAT JUSTIFIED THE
35 SEARCH;

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

38 (J) WHETHER A WARNING OR CITATION WAS ISSUED;

39 (K) WHETHER AN ARREST WAS MADE AND FOR WHAT CHARGE OR CHARGES;

40 (L) THE APPROXIMATE DURATION OF THE STOP; AND

41 (M) THE TIME AND LOCATION OF THE STOP.

42 5. EVERY LAW ENFORCEMENT AGENCY SHALL COMPILE THE INFORMATION SET
43 FORTH IN SUBDIVISION FOUR OF THIS SECTION FOR THE CALENDAR YEAR INTO A
44 REPORT TO THE DIVISION. THE FORMAT OF SUCH REPORT SHALL BE DETERMINED BY
45 THE DIVISION. THE REPORT SHALL BE SUBMITTED TO THE DIVISION NO LATER
46 THAN MARCH FIRST OF THE FOLLOWING CALENDAR YEAR.

47 6. NOT LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN, THE DIVISION,
48 IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL DEVELOP AND PROMULGATE:

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

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

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

5 8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION
6 COLLECTED FROM TRAFFIC STOPS TO THE DIVISION. THE DIVISION SHALL DEVEL-
7 OP AND IMPLEMENT A PLAN FOR A COMPUTERIZED DATA SYSTEM FOR PUBLIC VIEW-
8 ING OF SUCH DATA AND SHALL PUBLISH AN ANNUAL REPORT ON DATA COLLECTED
9 FOR THE GOVERNOR, THE LEGISLATURE, AND THE PUBLIC ON LAW ENFORCEMENT
10 TRAFFIC STOPS. INFORMATION RELEASED SHALL NOT REVEAL THE IDENTITY OF ANY
11 INDIVIDUAL.

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

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

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

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