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

1496--A

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. PARKER, ADAMS, BRESLIN, CARLUCCI, DIAZ, DILAN, DUANE, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- 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 THIRTEEN, EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE SHALL ADOPT A WRITTEN POLICY THAT PROHIBITS THE STOPPING, DETENTION OR SEARCH OF ANY PERSON WHEN SUCH ACTION IS SOLELY MOTIVATED

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

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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 THIRTEEN, 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 FOURTEEN, 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 THIRTEEN, 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.

6. (A) AN INDIVIDUAL SUBJECT TO BIAS-BASED PROFILING, OR AN ORGANIZATION WHOSE INTERESTS ARE GERMANE TO THE PURPOSE OF THIS SECTION, MAY ENFORCE THIS SECTION IN A CIVIL ACTION FOR ANY OR ALL OF THE FOLLOWING REMEDIES: COMPENSATORY AND PUNITIVE DAMAGES; INJUNCTIVE AND DECLARATORY RELIEF; AND SUCH OTHER RELIEF AS A COURT DEEMS APPROPRIATE.

(B) IN AN ACTION BROUGHT UNDER THIS SECTION, RELIEF MAY BE OBTAINED AGAINST:

(I) ANY GOVERNMENTAL BODY THAT EMPLOYED ANY LAW ENFORCEMENT OFFICER WHO ENGAGED IN BIAS-BASED PROFILING;

(II) ANY LAW ENFORCEMENT OFFICER WHO ENGAGED IN BIAS-BASED PROFILING; AND

(III) ANY PERSON WITH SUPERVISORY AUTHORITY OVER SUCH LAW ENFORCEMENT OFFICER.

(C) AN UNLAWFUL DISCRIMINATORY PRACTICE IS ESTABLISHED UNDER THIS SECTION WHEN:

(I) AN INDIVIDUAL OR ORGANIZATION BRINGS AN ACTION DEMONSTRATING THAT A LAW ENFORCEMENT OFFICER HAS, OR LAW ENFORCEMENT OFFICERS HAVE, INTENTIONALLY ENGAGED IN BIAS-BASED PROFILING OF ONE OR MORE INDIVIDUALS; AND

(II) THE GOVERNMENTAL BODY, LAW ENFORCEMENT OFFICER, OR SUPERVISOR AGAINST WHOM SUCH ACTION IS BROUGHT FAILS TO PROVE THAT:

(1) SUCH BIAS-BASED PROFILING IS NECESSARY TO ACHIEVE A COMPELLING GOVERNMENTAL INTEREST; AND

(2) THE BIAS-BASED PROFILING IS NARROWLY TAILORED TO ACHIEVE THAT COMPELLING GOVERNMENTAL INTEREST; AND

(3) THE LEAST RESTRICTIVE MEANS WERE USED TO ACHIEVE THE COMPELLING GOVERNMENTAL INTEREST; OR

(III) AN INDIVIDUAL OR ORGANIZATION BRINGS AN ACTION DEMONSTRATING THAT THE ACTIVITIES OF A LAW ENFORCEMENT OFFICER HAVE HAD A DISPARATE IMPACT ON INDIVIDUALS BASED ON ACTUAL OR PERCEIVED RACE, COLOR, ETHNICITY, RELIGION, NATIONAL ORIGIN, DISABILITY, HOUSING STATUS, OCCUPATION, OR SOCIOECONOMIC STATUS; AND

(1) THE GOVERNMENTAL BODY, LAW ENFORCEMENT OFFICER, OR SUPERVISOR AGAINST WHOM SUCH ACTION IS BROUGHT FAILS TO PROVE A SUBSTANTIAL JUSTIFICATION FOR SUCH ACTIVITIES, AND

(2) THE GOVERNMENTAL BODY, LAW ENFORCEMENT OFFICER OR SUPERVISOR DOES PROVE A SUBSTANTIAL JUSTIFICATION FOR SUCH ACTIVITIES, AND

(3) THE INDIVIDUAL OR ORGANIZATION DEMONSTRATES A COMPARABLY EFFECTIVE ALTERNATIVE POLICY OR PRACTICE, WHICH RESULTS IN LESS OF A DISPARATE IMPACT.

(4) IN ANY ACTION OR PROCEEDING TO ENFORCE THIS SECTION AGAINST ANY GOVERNMENTAL BODY, THE COURT MAY ALLOW A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AS PART OF THE COSTS, AND MAY INCLUDE EXPERT FEES AS PART OF THE ATTORNEY'S FEE.

S 2. This act shall take effect immediately.