

4016

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. PERRY, CLARK -- Multi-Sponsored by -- M. of A. HOOPER, MENG, PEOPLES-STOKES, J. RIVERA, TOWNS -- read once and referred to the Committee on Governmental 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 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. 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 THIRTEEN, EACH
19 MUNICIPAL 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.

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

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

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

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

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

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

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

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

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

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

56 S 2. This act shall take effect immediately.