

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:

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

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

LBD01320-02-2

1 BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, AGE, GENDER OR SEXUAL
2 ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL
3 RIGHTS OF THE PERSON.

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

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

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

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

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

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

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

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

54 (B) A FORM, IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED TO
55 REPORT COMPLAINTS PURSUANT TO SUBDIVISION FOUR OF THIS SECTION BY
56 PERSONS WHO BELIEVE THEY HAVE BEEN SUBJECTED TO A MOTOR VEHICLE STOP BY

1 A POLICE OFFICER SOLELY ON THE BASIS OF THEIR RACE, COLOR, ETHNICITY,
2 AGE, GENDER OR SEXUAL ORIENTATION.

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) THE GOVERNMENTAL BODY, LAW ENFORCEMENT OFFICER, OR SUPERVISOR
35 AGAINST WHOM SUCH ACTION IS BROUGHT FAILS TO PROVE A SUBSTANTIAL JUSTI-
36 FICATION FOR SUCH ACTIVITIES, AND

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

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

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

46 S 2. This act shall take effect immediately.