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

1089

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. JAFFEE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to establishing the office of law enforcement professional standards

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-aa to read as follows:

S 837-AA. OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS.

(B) "OFFICE" SHALL MEAN THE OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS.

2. CREATION OF THE OFFICE. (A) THERE IS HEREBY CREATED IN THE DIVISION OF CRIMINAL JUSTICE SERVICES AN OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS WHICH SHALL PERFORM SUCH ADMINISTRATIVE, INVESTIGATIVE, POLICY AND TRAINING OVERSIGHT, AND MONITORING FUNCTIONS, AS THE COMMISSIONER SHALL DIRECT, TO ASSURE AND MAINTAIN THE INTEGRITY OF LAW ENFORCEMENT ACTIVITIES AND TO PROVIDE ASSISTANCE TO LAW ENFORCEMENT ENTITIES STATEWIDE, INCLUDING BUT NOT LIMITED TO, ESTABLISHING POLICIES AND PROCEDURES TO PROHIBIT TRAFFIC STOPS THAT RESULT IN THE STOPPING, DETENTION OR SEARCH OF ANY PERSON WHEN SUCH ACTION IS SOLELY MOTIVATED BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, AGE, GENDER OR SEXUAL ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS OF THE PERSON.

(B) THE OFFICE SHALL TAKE APPROPRIATE STEPS TO PROMOTE AND ENSURE COMPLIANCE WITH THE GENERAL POLICY THAT PROHIBITS RACIAL PROFILING IN SELECTING VEHICLES FOR TRAFFIC STOPS, OR IN DECIDING UPON THE SCOPE AND SUBSTANCE OF POST-STOP ACTIONS.

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

LBD02681-01-3

(C) THE COMMISSIONER SHALL APPOINT A DIRECTOR OF THE OFFICE OF LAW ENFORCEMENT PROFESSIONAL STANDARDS. SUCH PERSON SHALL HAVE EDUCATION, EXPERIENCE OR PROFESSIONAL BACKGROUND IN THE FIELDS OF LAW, INVESTIGATION, CRIMINAL PRACTICE AND ADMINISTRATION.

(D) THE DIRECTOR, MAY WITH THE APPROVAL OF THE COMMISSIONER, ORGANIZE THE WORK OF THE OFFICE INTO SUCH BUREAUS AND OTHER ORGANIZATIONAL UNITS AS MAY BE NECESSARY. THE COMMISSIONER MAY ASSIGN TO THE OFFICE SUCH EMPLOYEES OF THE DIVISION AS MAY BE NECESSARY.

(E) ALL LAW ENFORCEMENT AGENCIES OPERATING UNDER THE AUTHORITY OF THE LAW OF THE STATE OF NEW YORK SHALL COOPERATE AND AID THE OFFICE IN THE PERFORMANCE OF ITS DUTIES.

3. DUTIES AND FUNCTIONS OF THE OFFICE. (A) (1) THE OFFICE SHALL PROMULGATE A WRITTEN POLICY FOR TRAFFIC STOPS THAT SHALL BE ADOPTED BY EVERY LOCAL AND STATE POLICE DEPARTMENT THAT PROHIBITS IN REGARD TO TRAFFIC STOPS, THE STOPPING, DETENTION OR SEARCH OF ANY PERSON WHEN SUCH ACTION IS SOLELY MOTIVATED BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, AGE, GENDER OR SEXUAL ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS OF THE PERSON.

(2) THE OFFICE SHALL DEVELOP A WRITTEN FORM THAT EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE SHALL USE, TO RECORD AND RETAIN THE FOLLOWING INFORMATION: (I) THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS; (II) CHARACTERISTICS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION 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.

(3) EACH MUNICIPAL POLICE DEPARTMENT, SHERIFF'S OFFICE, AND THE DIVISION OF STATE POLICE SHALL PROVIDE TO THE OFFICE: (I) A COPY OF EACH COMPLAINT RECEIVED PURSUANT TO THIS SECTION; AND (II) WRITTEN NOTIFICATION OF THE REVIEW AND DISPOSITION OF SUCH COMPLAINT.

(B) (1) THE OFFICE SHALL SET UP A PROCEDURE TO RECEIVE, REVIEW, AND INVESTIGATE COMPLAINTS BY CITIZENS THAT STATE AND LOCAL LAW ENFORCEMENT ENGAGED IN A STOP, DETENTION OR SEARCH OF SUCH PERSON, OR THE CITIZEN WAS A WITNESS TO SUCH STOP, DETENTION OR SEARCH, WHEN SUCH ACTION WAS SOLELY MOTIVATED BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, AGE, GENDER OR SEXUAL ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS OF THE PERSON.

(2) (A) STATE AND LOCAL LAW ENFORCEMENT AGENCIES SHALL NOTIFY THE OFFICE OF ALL COMPLAINTS RECEIVED FROM CITIZENS THAT STATE AND LOCAL LAW ENFORCEMENT ENGAGED IN A STOP, DETENTION OR SEARCH OF SUCH PERSON, OR THE CITIZEN WAS A WITNESS TO SUCH STOP, DETENTION OR SEARCH, WHEN SUCH ACTION WAS SOLELY MOTIVATED BY CONSIDERATIONS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, AGE, GENDER OR SEXUAL ORIENTATION, AND THE ACTION WOULD CONSTITUTE A VIOLATION OF THE CIVIL RIGHTS OF THE PERSON TO THE OFFICE.

(B) STATE AND LOCAL LAW ENFORCEMENT AGENCIES SHALL INFORM THE OFFICE OF THE OUTCOME OF SUCH COMPLAINTS UPON COMPLETION OF INVESTIGATION.

(3) AFTER THE OFFICE COMPLETES ITS INVESTIGATION OF SUCH COMPLAINTS OR WHEN THE OFFICE FINDS ANY INDICATION OF WRONGDOING THE COMPLAINT SHALL BE REFERRED TO THE STATE AND LOCAL LAW ENFORCEMENT INTERNAL AFFAIRS BUREAU AND ANY OTHER ACTIONS DEEMED APPROPRIATE BY THE DIRECTOR.

(C) THE OFFICE SHALL BE AUTHORIZED TO CONDUCT OPERATIONAL AUDITS AND INDEPENDENT ANALYSES OF DATA, INCLUDING SUCH DATA AS COLLECTED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND OTHER DATA AS NECESSARY AND APPROPRIATE, TO IDENTIFY ANY POTENTIAL DISPARITY IN ENFORCEMENT AND SYSTEMIC PROBLEMS THAT MAY EXIST THAT AFFECT MOTOR VEHICLE STOPS AND POST-STOP ENFORCEMENT ACTIONS, TRAINING PROVIDED TO LAW ENFORCEMENT OFFICIALS, INVESTIGATIONS OF ALLEGED MISCONDUCT, ANY OTHER MATTERS THAT MAY AFFECT THE INTEGRITY OF NEW YORK STATE AND LOCAL LAW ENFORCEMENT AGENCIES AND DEPARTMENTS AND SHALL MAKE RECOMMENDATIONS FOR APPROPRIATE ACTIONS.

(D) THE OFFICE SHALL HAVE TIMELY ACCESS TO ALL DATA AND OTHER RECORDS MAINTAINED BY THE STATE AND LOCAL LAW ENFORCEMENT AGENCIES THAT ARE DEEMED NECESSARY BY THE DIRECTOR TO CONDUCT INDEPENDENT ANALYSES AND TO PERFORM THE FUNCTIONS AUTHORIZED BY THIS SECTION. NOTHING IN THIS SECTION SHALL BE DEEMED TO REQUIRE THE DISCLOSURE OF RECORDS OR DATA IN VIOLATION OF ANY CONSTITUTIONAL OR STATUTORY PRIVACY PROTECTIONS OR ANY COLLECTIVE BARGAINING RIGHTS.

4. AUTHORITY OF THE OFFICE. THE OFFICE SHALL HAVE THE SPECIFIC AUTHORITY TO PERFORM THE FOLLOWING FUNCTIONS:

(A) REVIEW THE PROCEDURES AND IMPLEMENTATION RELATED TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES CONCERNING MOTOR VEHICLE STOPS AND POST-STOP ENFORCEMENT ACTIONS, SUPERVISION OF PATROL ACTIVITIES, TRAINING PROVIDED TO LAW ENFORCEMENT MEMBERS ASSIGNED TO PATROL DUTIES AND THE CONDUCT OF INVESTIGATIONS OF ALLEGED MISCONDUCT AND OTHER INTERNAL AFFAIRS;

(B) MONITOR, REVIEW AND EVALUATE THE QUALITY AND TIMELINESS OF THE STATE AND LOCAL LAW ENFORCEMENT AGENCIES' CONDUCT OF INVESTIGATION OF ALLEGED MISCONDUCT, DISCIPLINARY ACTIONS AND INTERVENTIONS, SUPERVISORY ACTIONS, REPORTS, MOTOR VEHICLE STOP REPORTS AND LOGS AND SUPERVISORY REVIEWS RELATING TO RACIAL PROFILING;

(C) APPROVE THE CURRICULA, PRESCRIBE TRAINER QUALIFICATIONS, AND REVIEW AND DEVELOP TRAINING OF STATE AND LOCAL LAW ENFORCEMENT MEMBERS ON CULTURAL AWARENESS, LAW ENFORCEMENT ETHICS AND LEADERSHIP, CONSTITUTIONAL LAW PERTAINING TO ARREST, SEARCH AND SEIZURE, EQUAL PROTECTION, AND OTHER RELEVANT LAW ENFORCEMENT ISSUES THE DIRECTOR DEEMS NECESSARY OR APPROPRIATE TO EFFECTUATE THE PURPOSES OF THIS SECTION; AND

(D) REVIEW ALL STATE AND LOCAL LAW ENFORCEMENT AGENCIES' INTERNAL AFFAIRS INVESTIGATIONS AND DISPOSITIONS, INCLUDING ANY DECISION BY AN AGENCY NOT TO REFER A COMPLAINT, FROM A CITIZEN OR OTHER SOURCE, TO THE OFFICE TO ASCERTAIN WHETHER LAW ENFORCEMENT AGENCIES HAVE COMPLIED WITH APPLICABLE OPERATING PROCEDURES, WHETHER THE OUTCOMES OF THOSE INVESTIGATIONS ARE SUPPORTED BY THE EVIDENCE, WHETHER ANY DISCIPLINE IMPOSED WAS APPROPRIATE AND MAKE RECOMMENDATIONS TO THE ATTORNEY GENERAL FOR APPROPRIATE REMEDIAL ACTION.

IN ORDER FOR A LOCAL OR STATE LAW ENFORCEMENT AGENCY TO COMPLETE ACCREDITATION REQUIREMENTS, LAW ENFORCEMENT OFFICERS OF SUCH AGENCY MUST COMPLETE A TRAINING AS DEVELOPED BY THE DIVISION IN RELATION TO PROHIBITING RACIAL PROFILING.

5. REPORTS. (A) THE OFFICE SHALL PREPARE ANNUAL PUBLIC REPORTS THAT INCLUDE AGGREGATE STATISTICS ON STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES AND PROCEDURES AND AGGREGATE DATA ON RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION AND AGE OF SUCH PERSONS INVOLVED IN THE TRAFFIC STOP. THESE REPORTS SHALL INCLUDE AGGREGATE STATISTICS ON THE NUMBER OF MOTOR VEHICLE STOPS, REASON FOR STOPS, ENFORCEMENT ACTIONS, INCLUDING BUT NOT LIMITED TO, CITATIONS, WARNINGS AND ARRESTS, NUMBER OF SEARCHES CONDUCTED, AND THE USE OF FORCE. THE

REPORTS SHALL ALSO INCLUDE AGGREGATE STATISTICS OF THE NUMBER OF CRIMINAL CHARGES FILED, CONTRABAND SEIZURES AND WANTED PERSONS TAKEN INTO CUSTODY AS A RESULT OF MOTOR VEHICLE STOPS.

(B) THE OFFICE SHALL PREPARE ANNUAL REPORTS PROVIDING AGGREGATE DATA REGARDING MISCONDUCT INVESTIGATIONS AND THE NUMBER OF EXTERNAL, INTERNAL, AND TOTAL COMPLAINTS RECEIVED AND THE DISPOSITION OF THOSE COMPLAINTS.

(C) THE COMMISSIONER SHALL, ON AN ANNUAL BASIS, REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE IMPLEMENTATION OF THIS SECTION.

(D) THE REPORT AND STATISTICS SHALL BE PUBLISHED ON THE DIVISION'S WEBSITE.

S 2. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.