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I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

1 Section 1. The executive law is amended by adding a new section 837-aa
2 to read as follows:

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

5 (A) "DIRECTOR" SHALL MEAN THE DIRECTOR OF THE OFFICE OF LAW ENFORCE-
6 MENT PROFESSIONAL STANDARDS.

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

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

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

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

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(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.

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

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

18 4. AUTHORITY OF THE OFFICE. THE OFFICE SHALL HAVE THE SPECIFIC AUTHOR-
19 ITY TO PERFORM THE FOLLOWING FUNCTIONS:

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

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

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

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

45 IN ORDER FOR A LOCAL OR STATE LAW ENFORCEMENT AGENCY TO COMPLETE
46 ACCREDITATION REQUIREMENTS, LAW ENFORCEMENT OFFICERS OF SUCH AGENCY MUST
47 COMPLETE A TRAINING AS DEVELOPED BY THE DIVISION IN RELATION TO PROHIB-
48 ITING RACIAL PROFILING.

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

1 REPORTS SHALL ALSO INCLUDE AGGREGATE STATISTICS OF THE NUMBER OF CRIMI-
2 NAL CHARGES FILED, CONTRABAND SEIZURES AND WANTED PERSONS TAKEN INTO
3 CUSTODY AS A RESULT OF MOTOR VEHICLE STOPS.

4 (B) THE OFFICE SHALL PREPARE ANNUAL REPORTS PROVIDING AGGREGATE DATA
5 REGARDING MISCONDUCT INVESTIGATIONS AND THE NUMBER OF EXTERNAL, INTER-
6 NAL, AND TOTAL COMPLAINTS RECEIVED AND THE DISPOSITION OF THOSE
7 COMPLAINTS.

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

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

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