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

3916

2013-2014 Regular Sessions

I N  S E N A T E

February 26, 2013

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

AN ACT to amend the criminal procedure law, in relation to searching a detained person for weapons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 3 of section 140.50 of the criminal procedure law, as amended by chapter 911 of the laws of 1972, is amended to read as follows:

3. (A) When upon stopping a person under circumstances prescribed in subdivisions one and two a police officer or court officer, as the case may be, reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons. If he finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, he may take it and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

(B) WHENEVER A FEMALE INDIVIDUAL IS TO BE SEARCHED PURSUANT TO THIS SUBDIVISION BY A MALE POLICE OFFICER, THE OFFICER SHALL GIVE THE INDIVIDUAL THE OPPORTUNITY TO HAVE THE SEARCH CONDUCTED BY A FEMALE OFFICER. IF THE INDIVIDUAL CHOOSES TO HAVE A FEMALE OFFICER PERFORM THE SEARCH, THE QUESTIONING OFFICER SHALL DETAIN THE INDIVIDUAL AND NO SEARCH OF THE INDIVIDUAL SHALL BE CONDUCTED UNTIL THE FEMALE OFFICER ARRIVES.

(C) THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION SHALL NOT APPLY: (I) WHEN THERE ARE NO FEMALE OFFICERS EMPLOYED BY THE POLICE DEPARTMENT OF THE QUESTIONING OFFICER, OR (II) WHEN THERE ARE FEMALE OFFICERS EMPLOYED BY THE POLICE DEPARTMENT OF THE QUESTIONING OFFICER, BUT NO SUCH FEMALE OFFICER IS WORKING AT THE TIME OF THE TEMPORARY QUESTIONING.

S 2. This act shall take effect immediately.

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

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