STATE OF NEW YORK

7918

IN SENATE

March 9, 2018

Introduced by Sen. HAMILTON -- 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 establishing an automatic expunction system for certain records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. On August 12, 2013, United States District Judge Shira A. Scheindlin issued an order in Floyd v. City of New York that found the city of New York had violated the Fourth and Fourteenth Amendments by acting with "deliberate indifference" toward the New York City Police Department's (NYPD) practice of making suspicionless "stops" and "frisks" and by adopting "a policy of indirect racial profiling by targeting racially defined groups" for "stops" and "frisks". Additionally, a remedial order was issued imposing remedies or "reforms" to the NYPD's "stop and frisk" practices. (959 F.Supp.2d 540, 562, 668 (S.D.N.Y. 2013)). In a settlement to a lawsuit brought by the New York Civil Liberties Union the city was required to delete personal information including names and addresses of individuals that were stopped, questioned and/or frisked. Between January 2004 and June 2012 the NYPD made 4.4 million stops in which 83% of them were made on African Americans and Hispanics. The legislature finds that any records associated with such unconstitutional stops, frisks and arrests shall be automatically expunged and notification shall be made to such individuals of such expunction.

§ 2. The criminal procedure law is amended by adding a new section 160.65 to read as follows:

§ 160.65 New York city stop and frisk automatic expunction.

1. For purposes of this section, the following terms shall have the following meanings:

(a) "Stop and frisk" shall have the same meaning as section 140.50 of the criminal procedure law.

(b) "Voidable stop" shall mean any stop that:

(i) qualifies as a stop and frisk;

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

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(ii) occurred between January two thousand four and June two thousand twelve by the New York city police department; and

(iii) resulted in either the completion of:

(A) a UF-250 form, a stop, question and frisk report worksheet; or

(B) a Form 61 complaint in which the SQF section was completed and resulted in a qualified arrest.

(b) "Qualified arrest" shall mean an arrest for any of the following offenses:

(i) resisting arrest pursuant to section 205.30 of the penal law;

(ii) disorderly conduct pursuant to section 240.20 of the penal law;

(iii) criminal possession of a weapon pursuant to sections 265.01, 265.02, 265.03 and 265.04 of the penal law; and

(iv) offenses involving marihuana pursuant to article two hundred twenty-one of the penal law.

2. The division of criminal justice services, in conjunction with the New York city police department shall establish an automatic expunction system to expunge official and unofficial records of all voidable stops. Such expunction shall include but not be limited to any convictions and all records pertaining to such stop including UF-250 form information, any and all records of arrest, investigation including computer databases, and records of detention pursuant to such voidable stop and/or qualified arrest, fingerprints, photographs, DNA samples, physical measurements, or any other record of identification.

3. Such automatic expunction system shall include:

(a) an automatic certification process that shall notify any individual at their last known address of such expunction; and

(b) an automatic notification mechanism for all licensing agencies to notify such that such expunctions have occurred and no individual shall be adversely affected by such voidable stop and/or qualified arrest.

4. (a) Any individual who knowingly fails to expunge or obliterate, or who releases information ordered expunged, is guilty of a class A misdemeanor. An individual, who, knowing the records are expunged, uses the information for financial gain, or willful destruction of a person's character is guilty of a class D felony.

(b) A penalty of thirty thousand dollars shall be assessed upon the New York city police department every month such department fails to comply with subdivision five of this section. Such penalty shall be deposited in the indigent legal services fund established under section ninety-eight-b of the state finance law.

(c) Should the division of criminal justice services or the New York city police department negligently disseminate any official or unofficial record described under subdivision two of this section, any individual adversely affected by such dissemination may, in a court having jurisdiction, bring a civil action in which a civil penalty may be assessed upon such division or department.

5. All expunctions, certifications and notifications required under this section shall be completed within one year of the effective date of this section.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.