STATE OF NEW YORK

5238

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

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

AN ACT to amend the executive law, in relation to prohibiting bias-based profiling by state and local law enforcement officers

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

Section 1. Declaration of legislative intent and findings. The legislature finds that bias-based policing endangers New York state's long tradition of serving as a welcoming place for people of all backgrounds. The legislature further finds that the people of the state of New York are in great debt to the hard work and dedication of police officers in their daily duties. The name and reputation of these officers should not be tarnished by the actions of those who would commit discriminatory practices.

The legislature expresses deep concern about the impact of racially discriminatory practices by certain law enforcement agencies. In particular, the legislature expresses concern about the New York state police's growing reliance on stop-and-frisk tactics and the impact of this practice on communities of color. In doing so, it is the legislature's intention to protect the personal privacy of all New Yorkers, to shield police officers from false claims of wrongdoing, and to contribute to the efficiency and effectiveness of our criminal justice system.

§ 2. The executive law is amended by adding a new article 13-B to read as follows:

ARTICLE 13-B

CONSENT PRIOR TO CONDUCTING SEARCHES

Section 268. Proof of consent prior to conducting searches.

269. Report.

§ 268. Proof of consent prior to conducting searches. 1. Prior to conducting a search of a person, or of a person's vehicle, home, or

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

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belongings that is not pursuant to a warrant, incident to an arrest, or supported by probable cause, law enforcement officers shall:

a. Articulate, in a language and manner understood by the person, that the person is being asked to voluntarily consent to a search and that he or she has the right to refuse consent;

b. Create an audio or written and signed record of the person's consent, which shall include:

(i) a statement that the person understands that he or she may refuse consent;

(ii) a statement that the person is freely and voluntarily providing consent;

(iii) a statement that the person understands that he or she may withdraw the consent at any time during the search;

(iv) the time and date of the search;

(v) the name or names and badge number or numbers of all law enforcement officers involved in the search; and

(vi) the make and registration number of the vehicle to be searched, if applicable.

2. After providing the advisement and creating the record of consent to search, a law enforcement officer may conduct the search.

3. A copy of the consent record shall be provided to the person who consented to the search.

4. If during legal proceedings a defendant moves to suppress evidence obtained in the course of the search, failure to comply with the requirements of this section shall be considered a factor in determining the voluntariness of the consent.

§ 269. Report. The New York state police and each local law enforcement agency shall submit to the legislature on an annual basis a report based on the records created under section two hundred sixty-eight of this article. Such report shall include the total number of searches conducted under such section, broken down by each precinct or troop division and by the race, ethnicity, sex, and age of the person searched. Such a report shall also include the total number of searches declined by individuals under this section.

§ 3. Separability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.