

STATE OF NEW YORK

2374

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. HYNDMAN -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to creating a written policy on the use of sustained auditory dispersal tools

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

1 Section 1. Section 837 of the executive law is amended by adding a new
2 subdivision 23 to read as follows:

3 23. (a) Establish a written policy prohibiting police agencies from
4 using sustained auditory dispersal tools.

5 (b) For the purposes of this subdivision, the term "sustained auditory
6 dispersal tool" shall mean any long range acoustic device, sonic weapon,
7 sonic cannon, or any high powered sound magnifier, using piezoelectric
8 transducer or other technology, to emit sustained tones, beeps, chirps,
9 or any deterrent tone or other non-verbal communication at decibels
10 shown to cause hearing loss or other dangerous effects for a sustained
11 period. Any such tone or non-verbal communication over ninety decibels
12 shall be considered presumptively unreasonable. The term "sustained
13 auditory dispersal tool" shall not include any device designed to magni-
14 fy information or orders via verbal communication at ninety decibels or
15 below, and properly administered according to health and safety stand-
16 ards, by properly trained personnel, provided, however, that such use of
17 any such device as a deterrent and not as a mode of verbal communication
18 shall cause such device to be a "sustained auditory dispersal tool".

19 (c) (i) Any individual who has been subjected to a sustained auditory
20 dispersal tool by a law enforcement officer in violation of this section
21 or the written policy of the division of criminal justice services
22 promulgated under this section may institute a civil action against the
23 employing agency of such law enforcement officer for any of the follow-
24 ing:

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

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1 (A) One thousand dollars per violation or actual damages, whichever is
2 greater;

3 (B) Punitive damages;

4 (C) Injunctive or declaratory relief; and/or

5 (D) Any other relief the court deems proper.

6 (ii) In assessing the amount of punitive damages, the court shall
7 consider:

8 (A) The number of times the person was unlawfully subjected to a
9 sustained auditory dispersal tool;

10 (B) The decibel level used;

11 (C) Medical complications resulting from the use of sustained auditory
12 dispersal tool; and

13 (D) The persistence of violations by the particular law enforcement
14 agency and law enforcement officer.

15 (iii) In any action brought under this section, the court may award
16 reasonable attorneys' fees to a prevailing plaintiff.

17 § 2. This act shall take effect immediately.