

# STATE OF NEW YORK

2662

2021-2022 Regular Sessions

## IN ASSEMBLY

January 19, 2021

Introduced by M. of A. BICHOTTE HERMELYN, PEOPLES-STOKES, AUBRY, GOTTFRIED, WALKER, COOK, PERRY, PRETLOW, DINOWITZ, HEVESI, L. ROSENTHAL, REYES, ZEBROWSKI, BARRETT, SIMON, DICKENS, ROZIC, BARNWELL, O'DONNELL, EPSTEIN, COLTON, RICHARDSON, HUNTER, RODRIGUEZ, SEAWRIGHT, GLICK, WILLIAMS, TAYLOR, VANEL, OTIS, NIOU, BRONSON, CARROLL, CRUZ, DE LA ROSA, HYNDMAN, JACOBSON, McDONOUGH, NOLAN, PICHARDO, RAMOS, STECK, THIELE, KIM, FRONTUS -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to ethnic or racial profiling

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-w  
2 to read as follows:

3 § 837-w. Ethnic and racial profiling. 1. For the purposes of this  
4 section:

5 (a) "Law enforcement agency" means an agency established by the state  
6 or a unit of local government engaged in the prevention, detection, or  
7 investigation of violations of criminal law.

8 (b) "Law enforcement officer" means a police officer or peace officer,  
9 as defined in subdivisions thirty-three and thirty-four of section 1.20  
10 of the criminal procedure law, employed by a law enforcement agency.

11 (c) "Racial or ethnic profiling" means the practice of a law enforce-  
12 ment agent or agency, relying, to any degree, on actual or perceived  
13 race, color, ethnicity, national origin or religion in selecting which  
14 individual or location to subject to routine or spontaneous investigato-  
15 ry activities or in deciding upon the scope and substance of law  
16 enforcement activity following the initial investigatory procedure,  
17 except when there is trustworthy information, relevant to the locality  
18 and timeframe, that links a specific person or location with a partic-

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

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1 ular characteristic described in this paragraph to an identified crimi-  
2 nal incident or scheme.

3 (d) "Routine or spontaneous investigatory activities" means the  
4 following activities by a law enforcement agent:

5 (i) Interviews;

6 (ii) Traffic stops;

7 (iii) Pedestrian stops;

8 (iv) Frisks and other types of body searches;

9 (v) Consensual or nonconsensual searches of persons, property or  
10 possessions (including vehicles) of individuals;

11 (vi) Data collection and analysis, assessments and investigations; and

12 (vii) Inspections and interviews.

13 2. Every law enforcement agency and every law enforcement officer  
14 shall be prohibited from engaging in racial or ethnic profiling.

15 3. Every law enforcement agency shall promulgate and adopt a written  
16 policy which prohibits racial or ethnic profiling. In addition, each  
17 such agency shall promulgate and adopt procedures for the review and the  
18 taking of corrective action with respect to complaints by individuals  
19 who allege that they have been the subject of racial or ethnic profil-  
20 ing. A copy of each such complaint received pursuant to this section and  
21 written notification of the review and disposition of such complaint  
22 shall be promptly provided by such agency to the division.

23 4. Each law enforcement agency shall, using a form to be determined  
24 by the division, record and retain the following information with  
25 respect to law enforcement officers employed by such agency:

26 (a) the number of persons stopped as a result of a motor vehicle stop  
27 for traffic violations and the number of persons stopped as a result of  
28 a routine or spontaneous law enforcement activity as defined in this  
29 section;

30 (b) the characteristics of race, color, ethnicity, national origin or  
31 religion of each such person, provided the identification of such char-  
32 acteristics shall be based on the observation and perception of the  
33 officer responsible for reporting the stop and the information shall not  
34 be required to be provided by the person stopped;

35 (c) if a vehicle was stopped, the number of individuals in the stopped  
36 motor vehicle;

37 (d) the nature of the alleged violation that resulted in the stop or  
38 the basis for the conduct that resulted in the individual being stopped;

39 (e) whether a pat down or frisk was conducted and, if so, the result  
40 of the pat down or frisk;

41 (f) whether a search was conducted and, if so, the result of the  
42 search;

43 (g) if a search was conducted, whether the search was of a person, a  
44 person's property, and/or a person's vehicle, and whether the search was  
45 conducted pursuant to consent and if not, the basis for conducting the  
46 search including any alleged criminal behavior that justified the  
47 search;

48 (h) whether an inventory search of such person's impounded vehicle was  
49 conducted;

50 (i) whether a warning or citation was issued;

51 (j) whether an arrest was made and for what charge or charges;

52 (k) the approximate duration of the stop; and

53 (l) the time and location of the stop.

54 5. Every law enforcement agency shall compile the information set  
55 forth in subdivision four of this section for the calendar year into a  
56 report to the division. The format of such report shall be determined by

1 the division. The report shall be submitted to the division no later  
2 than March first of the following calendar year.

3 6. The division, in consultation with the attorney general, shall  
4 develop and promulgate:

5 (a) A form in both printed and electronic format, to be used by law  
6 enforcement officers to record the information listed in subdivision  
7 four of this section; and

8 (b) A form to be used to report complaints pursuant to subdivision  
9 three of this section by individuals who believe they have been  
10 subjected to racial or ethnic profiling.

11 7. Every law enforcement agency shall promptly make available to the  
12 attorney general, upon demand and notice, the documents required to be  
13 produced and promulgated pursuant to subdivisions three, four and five  
14 of this section.

15 8. Every law enforcement agency shall furnish all data/information  
16 collected pursuant to subdivision four of this section to the division.  
17 The division shall develop and implement a plan for a computerized data  
18 system for public viewing of such data and shall publish an annual  
19 report on data collected for the governor, the legislature, and the  
20 public on law enforcement stops. Information released shall not reveal  
21 the identity of any individual.

22 9. The attorney general may bring an action on behalf of the people  
23 for injunctive relief and/or damages against a law enforcement agency  
24 that is engaging in or has engaged in an act or acts of racial profiling  
25 in a court having jurisdiction to issue such relief. The court may award  
26 costs and reasonable attorney fees to the attorney general who prevails  
27 in such an action.

28 10. In addition to a cause of action brought pursuant to subdivision  
29 nine of this section, an individual who has been the subject of an act  
30 or acts of racial profiling may bring an action for injunctive relief  
31 and/or damages against a law enforcement agency that is engaged in or  
32 has engaged in an act or acts of racial profiling. The court may award  
33 costs and reasonable attorney fees to a plaintiff who prevails in such  
34 an action.

35 11. Nothing in this section shall be construed as diminishing or abro-  
36 gating any right, remedy or cause of action which an individual who has  
37 been subject to racial or ethnic profiling may have pursuant to any  
38 other provision of law.

39 § 2. This act shall take effect immediately; provided that:

40 1. the provisions of subdivision 4 of section 837-w of the executive  
41 law as added by section one of this act shall take effect on the ninety-  
42 eth day after it shall have become a law; and

43 2. the provisions of subdivision 6 of section 837-w of the executive  
44 law as added by section one of this act shall take effect on the sixti-  
45 eth day after it shall have become a law.