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:

Section 1. The executive law is amended by adding a new section 837-w to read as follows:

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

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

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

(c) "Racial or ethnic profiling" means the practice of a law enforcement agent or agency, relying, to any degree, on actual or perceived race, color, ethnicity, national origin or religion in selecting which individual or location to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality 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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ular characteristic described in this paragraph to an identified criminal incident or scheme.

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

(i) Interviews;

(ii) Traffic stops;

(iii) Pedestrian stops;

(iv) Frisks and other types of body searches;

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

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

(vii) Inspections and interviews.

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

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

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

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

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

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

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

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

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

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

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

(i) whether a warning or citation was issued;

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

(k) the approximate duration of the stop; and

(l) the time and location of the stop.

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

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

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

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

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

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

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

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

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

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

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

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

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