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:

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

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

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

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

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

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

(B) Punitive damages;

(C) Injunctive or declaratory relief; and/or

(D) Any other relief the court deems proper.

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

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

(B) The decibel level used;

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

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

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

§ 2. This act shall take effect immediately.