

# STATE OF NEW YORK

3978--A

Cal. No. 104

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

Introduced by M. of A. BICHOTTE HERMELYN, PEOPLES-STOKES, AUBRY, WALKER, COOK, PRETLOW, DINOWITZ, HEVESI, L. ROSENTHAL, REYES, ZEBROWSKI, BARRETT, SIMON, DICKENS, ROZIC, EPSTEIN, COLTON, HUNTER, SEAWRIGHT, GLICK, WILLIAMS, TAYLOR, VANEL, OTIS, BRONSON, CARROLL, CRUZ, HYNDMAN, JACOBSON, RAMOS, STECK, THIELE, KIM, ZINERMAN, JACKSON, GONZALEZ-ROJAS, LAVINE, KELLES, GIBBS, ARDILA -- read once and referred to the Committee on Codes -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the executive law, in relation to bias-based 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-y  
2 to read as follows:

3 § 837-y. Bias-based profiling. 1. For the purposes of this section:

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

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

10 (c) "Bias-based profiling" means the reliance, to any degree, on actu-  
11 al or perceived race, color, ethnicity, national origin, immigration or  
12 citizenship status, age, religion, gender identity or expression, sexual  
13 orientation, mental or physical disability, socioeconomic status, or  
14 housing status in selecting which persons to subject to stops, in  
15 selecting which locations to subject persons to stops, or in deciding  
16 the scope or substance of law enforcement action against a person,  
17 except that an officer may consider or rely on characteristics listed in  
18 a specific suspect description relevant to the locality and timeframe  
19 and based on trustworthy information.

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

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

3 (i) Interviews;

4 (ii) Traffic stops;

5 (iii) Pedestrian stops;

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

7 (v) Consensual or nonconsensual searches of persons, property or  
8 possessions (including vehicles) of individuals.

9 (e) "Political subdivision" means any county, municipality, depart-  
10 ment, commission, district, board, or other public body, whether corpo-  
11 rate or otherwise, created by or under state law, that has a law  
12 enforcement agency or employs law enforcement officers.

13 2. Every law enforcement agency and every law enforcement officer  
14 shall be prohibited from engaging in bias-based profiling.

15 3. Every law enforcement agency shall promulgate and adopt a written  
16 policy which prohibits bias-based profiling. The policy shall be made  
17 publicly available. In addition, each such agency shall promulgate and  
18 adopt procedures for the review and the taking of corrective action with  
19 respect to complaints by individuals who allege that they have been the  
20 subject of bias-based profiling. The policy shall be made publicly  
21 available. In a manner determined by the division in consultation with  
22 the attorney general, a copy of each such complaint received pursuant to  
23 this section and written notification of the review and disposition of  
24 such complaint shall be promptly provided by such agency to the divi-  
25 sion. Furthermore, on or before its effective date set forth in subdivi-  
26 sion twelve of this section, and at least once annually thereafter,  
27 every law enforcement agency shall review the data it has collected  
28 pursuant to subdivision four of this section to ensure that its proce-  
29 dures, practices, and training effectively address and prohibit bias-  
30 based profiling.

31 4. Each law enforcement agency shall, using a form to be determined  
32 by the division in consultation with the attorney general, record and  
33 retain the following incident-specific information with respect to law  
34 enforcement officers employed by such agency:

35 (a) the number of persons stopped as a result of a routine or sponta-  
36 neous law enforcement activity as defined in this section;

37 (b) whether the person stopped was in a vehicle at the time of the  
38 stop;

39 (c) the characteristics of race, color, ethnicity, national origin,  
40 religion, age, gender identity or expression, sexual orientation, and  
41 mental or physical disability of each such person, provided the iden-  
42 tification of such characteristics shall be based on the observation and  
43 perception of the officer responsible for initiating the stop and the  
44 information shall not be required to be provided by the person stopped;

45 (d) whether the person stopped appeared to have limited or no English  
46 fluency;

47 (e) whether the person stopped appeared to be experiencing a mental or  
48 behavioral crisis;

49 (f) whether the officer perceived the person stopped to be experienc-  
50 ing homelessness;

51 (g) if a vehicle was stopped, the number of individuals in the stopped  
52 vehicle;

53 (h) if a vehicle was stopped, whether the officer ordered any person  
54 to exit the vehicle;

55 (i) the reason the stop was initiated;

1 (j) if a search was conducted, whether the search was of a person, a  
2 person's property and/or a person's vehicle, whether the search was  
3 conducted pursuant to consent, the basis for conducting the search  
4 including any alleged criminal behavior that justified the search, and  
5 what, if any, contraband or evidence was discovered;

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

8 (l) if a search was conducted, whether the officer seized any property  
9 and, if so, the type and amount of property that was seized and the  
10 basis for the seizure;

11 (m) whether a police dog performed a sniff and, if so, whether the dog  
12 alerted to the presence of contraband;

13 (n) whether the officer handcuffed or otherwise physically restrained  
14 any person during the stop;

15 (o) whether a warning or citation was issued and, if so, the violation  
16 or violations cited;

17 (p) whether an arrest was made and, if so, for what charge or charges;

18 (q) whether the officer used physical force against any person and, if  
19 so, the type of force used;

20 (r) whether the officer pointed a firearm or electronic control weapon  
21 at any person;

22 (s) whether the encounter resulted in a vehicle or foot pursuit;

23 (t) the approximate duration of the stop;

24 (u) the time and location of the stop; and

25 (v) the following information about the officer initiating the stop:

26 (i) the type of assignment to which the officer was assigned;

27 (ii) the officer's years of experience; and

28 (iii) the total number of arrests the officer has made in the past  
29 twelve months.

30 5. Each political subdivision covered by this section shall furnish to  
31 the division, in a manner that shall be defined and prescribed by the  
32 division in consultation with the attorney general, a report which shall  
33 include:

34 (a) the total amount spent in the prior year, either by the political  
35 subdivision or by any entity on behalf of such political subdivision, on  
36 settlements and judgments involving an allegation of law enforcement  
37 misconduct, including settlements reached before any lawsuit has been  
38 filed, and that shall be broken down by individual settlement or judg-  
39 ment, shall specify whether a settlement or judgment is being described,  
40 and shall include at a minimum:

41 (i) a brief description of the allegation or claim;

42 (ii) the portion of the settlement or judgment paid directly by the  
43 political subdivision;

44 (iii) the portion, if any, paid by insurance, or by a central risk  
45 management fund or pool; and

46 (iv) if any portion of the settlement or judgment is paid with bonds,  
47 the amount of such bonds, as well as the total future cost of such  
48 bonds, including any interest and fees;

49 (b) the total amount, if any, spent on any insurance premiums paid by  
50 the political subdivision for insurance against law enforcement miscon-  
51 duct;

52 (c) the total amount, if any, that the political subdivision contrib-  
53 uted to any central risk management fund or risk pool toward the settle-  
54 ment of law enforcement misconduct claims; and

55 (d) any injunctive or declaratory relief awarded, or any comparable  
56 terms in any settlement agreement.

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

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

6 (b) A form to be used to report complaints pursuant to subdivision  
7 three of this section by individuals who believe they have been  
8 subjected to bias-based profiling.

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

13 8. On or before the effective date of this section, and at least once  
14 annually thereafter, every law enforcement agency and political subdivi-  
15 sion covered by this section shall compile and furnish all  
16 data/information collected pursuant to subdivisions four and five of  
17 this section to the division. The division, in consultation with the  
18 attorney general, shall develop and implement a plan for a computerized  
19 data system for public viewing of such data and shall publish an annual  
20 report on data collected for the governor, the legislature, and the  
21 public. Information released publicly shall not reveal the identity of  
22 any individual. Any information received by the division shall be made  
23 available to the attorney general upon request.

24 9. The attorney general may bring an action on behalf of the people  
25 for injunctive relief and/or damages against a law enforcement agency  
26 that is engaging in or has engaged in a pattern or practice of bias-  
27 based profiling in a court having jurisdiction to issue such relief. The  
28 court may award costs and reasonable attorney fees to the attorney  
29 general who prevails in such an action. The attorney general may inves-  
30 tigate and, if warranted, bring a civil action for equitable or declara-  
31 tory relief against a law enforcement agency that fails to comply with  
32 the remaining provisions of this section.

33 10. In addition to a cause of action brought pursuant to subdivision  
34 nine of this section, an individual who has been the subject of an act  
35 or acts of bias-based profiling may bring an action for injunctive  
36 relief and/or damages against a law enforcement agency that is engaged  
37 in or has engaged in an act or acts of bias-based profiling. The court  
38 may award costs and reasonable attorney fees to a plaintiff who prevails  
39 in such an action. In addition, an individual may bring a civil action  
40 for equitable or declaratory relief against a law enforcement agency  
41 that fails to comply with the remaining provisions of this section.

42 11. Nothing in this section shall be construed as diminishing or abro-  
43 gating any right, remedy or cause of action which an individual who has  
44 been subject to bias-based profiling may have pursuant to any other  
45 provision of law.

46 12. Each law enforcement agency and political subdivision covered by  
47 this section shall report all information required by subdivisions four  
48 and five of this section in accordance with the following schedule:

49 (a) each law enforcement agency that employs one thousand or more law  
50 enforcement officers, and each political subdivision that has such an  
51 agency, shall issue their first annual reports pursuant to subdivisions  
52 four and five of this section no later than fourteen months after the  
53 regulations promulgated pursuant to this section have been finalized;

54 (b) each law enforcement agency that employs four hundred or more but  
55 less than one thousand law enforcement officers, and each political  
56 subdivision that has such an agency, shall issue their first annual

1 reports pursuant to subdivisions four and five of this section no later  
2 than two years after the regulations promulgated pursuant to this  
3 section have been finalized;

4 (c) each law enforcement agency that employs fifty or more but less  
5 than four hundred law enforcement officers, and each political subdivi-  
6 sion that has such an agency, shall issue their first annual reports  
7 pursuant to subdivisions four and five of this section no later than  
8 three years after the regulations promulgated pursuant to this section  
9 have been finalized; and

10 (d) each law enforcement agency that employs one or more but less than  
11 fifty law enforcement officers, and each political subdivision that has  
12 such an agency, shall issue their first annual reports pursuant to  
13 subdivisions four and five of this section no later than four years  
14 after the regulations promulgated pursuant to this section have been  
15 finalized.

16 13. No later than one hundred eighty days after the effective date of  
17 this section, the division, in consultation with the attorney general,  
18 shall adopt regulations for the collection and reporting of data  
19 required under this section, in a manner prescribed under section two  
20 hundred two of the state administrative procedure act. The regulations  
21 adopted shall specify all data to be reported, and provide standards,  
22 definitions, and technical specifications not inconsistent with the  
23 requirements of this section to ensure uniform reporting practices  
24 across all reporting entities. To the extent possible, and consistent  
25 with the requirements of this section, such regulations shall be compat-  
26 ible with any similar federal data collection or reporting programs.

27 § 2. This act shall take effect immediately.