STATE OF NEW YORK

7111--A

2023-2024 Regular Sessions

IN SENATE

May 18, 2023

Introduced by Sens. HOYLMAN-SIGAL, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the vehicle and traffic law, in relation to limiting the frequency of traffic stops for minor violations; to amend the criminal procedure law, in relation to the basis for a motion to suppress or exclude evidence; and to amend the executive law, in relation to the duties of the division of criminal justice services

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

Section 1. The vehicle and traffic law is amended by adding a new article 23-A to read as follows:

ARTICLE 23-A

CERTAIN TRAFFIC STOPS RESTRICTED

Section 1106. Definitions.
1107. Restrictions on traffic stops and searches.
1108. Data collection.
1109. Effect.

§ 1106. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(a) "Primary violation" means a violation of this chapter that does not constitute a secondary violation.

(b) "Secondary violation" means any of the following:

(1) the failure to have a valid certificate of inspection in violation of section three hundred six of this chapter;

(2) the failure to have adequate windshield wipers in violation of paragraph (b) of subdivision one of section three hundred seventy-five of this chapter;

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

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(3) the failure to have two lighted headlamps, in violation of subparagraph one of paragraph (a) of subdivision two of section three hundred seventy-five of this chapter if the vehicle has one lighted headlamp;

(4) the failure to have two lighted lamps on the rear, in violation of subparagraph three of paragraph (a) of subdivision two of section three hundred seventy-five of this chapter if the vehicle has one lighted rear lamp;

(5) the failure to have a light that illuminates the license plate, in violation of subparagraph four of paragraph (a) of subdivision two of section three hundred seventy-five of this chapter;

(6) improper alignment or height of headlights, in violation of paragraph (b) of subdivision two of section three hundred seventy-five of this chapter;

(7) excessively bright headlights, in violation of paragraph (c) of subdivision two of section three hundred seventy-five of this chapter;

(8) obstructed view from a rearview mirror due to an item dangling from the mirror in violation of paragraph (a) of subdivision ten of section three hundred seventy-five of this chapter, unless the driver's view is so obstructed or compromised as to create a condition that increases the likelihood of injury or death;

(9) obstructed view from an item on the front windshield in violation of paragraph (a) of subdivision twelve-a of section three hundred seventy-five of this chapter unless the driver's view is so obstructed or compromised as to create a condition that increases the likelihood of injury or death;

(10) excessive tint in violation of subparagraph one, two, three or four of paragraph (b) of subdivision twelve-a of section three hundred seventy-five of this chapter;

(11) obstructed view from an item on the front windshield in violation of subdivision thirty of section three hundred seventy-five of this chapter unless the driver's view is so obstructed or compromised as to create a condition that increases the likelihood of injury or death;

(12) the failure to have two stop lamps, in violation of paragraph (b) of subdivision forty of section three hundred seventy-five of this chapter if the vehicle has one working stop lamp;

(13) excessive noise in violation of paragraph (a) of subdivision three of section three hundred eighty-six of this chapter;

(14) expired motor vehicle registration or failure to properly display registration tags, in violation of section four hundred one of this chapter;

(15) the failure of a pedestrian to obey a traffic control device, in violation of paragraph three of subdivision (b) of section eleven hundred eleven of this title;

(16) the failure of a pedestrian to obey a traffic control device, in violation of paragraph four of subdivision (d) of section eleven hundred eleven of this title;

(17) the failure of a pedestrian to obey a traffic control device, in violation of subdivision (b) or (c) of section eleven hundred twelve of this title;

(18) crossing the street in a diagonal, in violation of subdivision (c) of section eleven hundred fifty-two of this title;

(19) the failure to use the right side of the crosswalk, in violation of section eleven hundred fifty-two of this title;

(20) the failure of a pedestrian to use the sidewalk or walk on the left side of the road, in violation of section eleven hundred fifty-six of this title;

(21) the failure to signal a turn one hundred feet prior to turning, if such driver has signaled a turn at any time prior to turning, in violation of subdivision (b) of section eleven hundred sixty-three of this title;

(22) any parking infraction in violation of section twelve hundred two of this title. Nothing in this provision shall prevent an officer from asking a driver unlawfully parked, or unlawfully obstructing traffic or a fire hydrant, to move their car;

(23) littering, unless an object is thrown from a vehicle in a manner that creates a condition that increases the likelihood of injury or death, in violation of section twelve hundred twenty of this title; or

(24) riding a bicycle without the proper lamp, bell, reflective tires or reflective devices, in violation of subdivisions (a), (b), (c), (d) and (e) of section twelve hundred fifty-two of this title, unless the ability to view the bicycle or cyclist is so compromised as to create a condition that substantially increases the likelihood of injury or death.

(c) "Officer" means either a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or a peace officer as defined in section 2.10 of the criminal procedure law.

§ 1107. Restrictions on traffic stops and searches. (a) (1) Except as provided in paragraph two of this subdivision, an officer shall not stop, arrest, or detain the operator of a motor vehicle or bicycle, or a pedestrian:

(i) for a secondary violation or suspicion of a secondary violation as defined in section eleven hundred six of this article; or

(ii) based on suspicion or probable cause to believe that the driver or any passenger in the vehicle has an outstanding warrant for a failure to pay an outstanding fine or fee or for a failure to appear in court for any offense.

(2) An officer may stop, arrest, or detain the operator of a motor vehicle or bicycle or a pedestrian for a secondary violation if:

(i) the officer lawfully stopped or detained the operator or pedestrian for a primary violation or other offense not enumerated in this chapter; or

(ii) the operator is driving a commercial vehicle.

(3) Notwithstanding paragraph two of this subdivision, an officer shall not stop, detain, or arrest the operator or passenger of a motor vehicle or bicycle, or a pedestrian when the primary reason for the stop, detention, or arrest is the person's race, creed, color, national origin, or other protected status under the human rights law.

(b) (1) Prior to asking for consent to search a vehicle, an officer shall advise an individual of their right to refuse the search. The officer shall provide the driver or passenger with a form setting forth the right to refuse the search, and the driver or passenger must sign a form stating that the driver or passenger has been informed of the right to refuse the search, and waives that right. The information and form must be provided to the driver or passenger in that person's native language.

(2) Following a stop for a violation of this chapter, any officer equipped with a body-worn camera must activate the camera. Prior to any search of an individual or their property following such a stop, the officer must state the reason for any search of an individual's person, property or vehicle on the body-worn camera.

(3) In any stop other than those based on an alleged violation of subdivision four or four-a of section eleven hundred ninety-two of this

title, or paragraph (e) of subdivision two of section forty-nine-a of the navigation law, or paragraph (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law, an officer's perception of the odor of cannabis shall not serve as a basis to search a motor vehicle, or to search the driver, occupants, or any of the contents of a motor vehicle.

(4) An officer may not use a drug-detection canine on a stopped motor vehicle unless the officer has probable cause to believe either that the motor vehicle contains illegal narcotics (other than cannabis), or that a driver or an occupant of the motor vehicle possesses illegal narcotics (other than cannabis).

§ 1108. Data collection. (a) No later than January first, two thousand twenty-five, each law enforcement agency subject to the provisions of this article shall begin collecting incident-level data on all traffic stops conducted by officers employed by the law enforcement agency, including all information described in subdivision (c) of this section.

(b) No later than January first, two thousand twenty-six, each law enforcement agency collecting information as provided in this section shall furnish annually to the division of criminal justice services, in a manner defined and prescribed by the division, a report of all stops conducted in the prior year by officers employed by the agency.

(c) Each report required under subdivision (b) of this section shall include, at a minimum, the following information for each stop or arrest:

(1) the time, date, duration, and location of the stop;

(2) the reason for the stop including the penal statute or provision of this chapter alleged to have been violated, if any;

(3) the year, make, model, registration number and state of registration of the vehicle;

(4) the result of the stop, such as no action, warning, citation, search, use of physical force, entry of information into a data collection database, or arrest;

(5) the perceived race or ethnicity, gender, and age of each person stopped;

(6) whether the person stopped appeared to be experiencing a mental or other behavioral crisis;

(7) actions taken by the officer during the stop, including, but not limited to, the following:

(i) whether the officer searched any person, vehicle, or any property, and, if so, the type of search (e.g., pat-down), the basis for the search, and the type of contraband or evidence discovered, if any;

(ii) whether the officer asked for consent to search the person or any property, and, if so, whether consent was provided;

(iii) whether the officer seized any property and, if so, a description of all property seized and the basis for the seizure;

(iv) if weapons, marijuana or controlled substances were seized, detailed descriptions of such items including weight of any substances, and make and model of any weapons;

(v) whether the officer used physical force against any person and, if so, the type of force used, including whether any weapon was used;

(vi) if anyone, whether officer or civilian, was injured, a description of all injuries to each person, whether treatment was provided, and the facility, if any, at which treatment was provided;

(vii) whether the officer pointed a firearm or a conducted energy device at any person;

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

(ix) whether the officer ordered any person to exit the vehicle and if so, where such person was detained;

(x) whether the officer handcuffed or otherwise physically restrained any person during the stop, such as by placing a person in a police vehicle; and

(xi) whether the officer checked, or asked dispatch to check, for any outstanding warrants for the person;

(8) if a traffic summons or ticket was issued, the violation or violations alleged;

(9) if an arrest was made, the offense or offenses charged;

(10) the following information about the officer conducting the stop:

(i) the officer's unique identification number; and

(ii) the nature of the officer's assignment;

(11) whether anyone died as a result of the encounter;

(12) whether there was a motor vehicle accident; and

(13) whether the stop resulted in the seizure and/or impoundment of the vehicle, and the basis for such seizure.

(d) Law enforcement agencies subject to this section shall not report or make publicly available the address, social security number, or other unique personal identifying information of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that restricted information of the individual stopped is not transmitted to the department of criminal justice or otherwise released to the public.

(e) Each law enforcement agency covered by this section shall develop and make publicly available a policy governing review and auditing of stop data collected to ensure officer compliance with the requirements of this article.

§ 1109. Effect. (a) Any evidence recovered from or derived during a stop, arrest, detention, or search made in violation of this article, or recovered as a result of such a stop, arrest, detention, or search shall be subject to the provisions of section 60.77 of the criminal procedure law. Nothing in this section shall be construed to preempt or limit existing remedies or causes of action that may be triggered by violations of this article.

(b) (1) This article shall supercede any local law or ordinance that would expand the bases for an officer to engage in a stop, search, citation, detention, arrest, or questioning beyond those specifically enumerated in this article, or otherwise conflict with or frustrate the purpose of any provision of this article.

(2) This article shall not preempt local laws that would restrict further the role of law enforcement officers in traffic enforcement, including by:

(i) assigning certain traffic enforcement functions to local officials or personnel who are authorized to conduct such functions instead of sworn law enforcement officers; or

(ii) placing additional limits on officer conduct or questioning during traffic stops.

§ 2. The criminal procedure law is amended by adding a new section 60.77 to read as follows:

§ 60.77 Rules of evidence; admissibility of evidence derived from the unlawful stop of a motor vehicle, bicyclist or pedestrian.

1. Evidence derived from the unlawful stop of a motor vehicle, bicyclist or pedestrian by a law enforcement officer that was primarily

based on a person's race, creed, color, national origin, or other status protected under the human rights law, shall be inadmissible in a criminal action against such person or any other person whose freedom of movement was affected by the stop.

2. For purposes of this section a stop is unlawful when, notwithstanding the existence of probable cause or reasonable suspicion to believe a person has committed a traffic infraction or a petty offense defined in any city, town or village code, the law enforcement officer would not have initiated the stop but for a person's race, creed, color, national origin or other status protected under the human rights law.

3. A motion to exclude evidence pursuant to this section shall be made and determined in the same manner as a pre-trial motion to suppress evidence pursuant to article seven hundred ten of this chapter, and the defendant shall bear the burden of proving by a preponderance of the evidence that the stop was unlawful within the meaning of this section. In evaluating the motion to exclude, the court shall consider the nature of the traffic infraction or offense giving rise to the stop, the law enforcement officer's usual duties with respect to enforcement of the vehicle and traffic law or city, town or village code provision, any evidence of a pattern of discriminatory enforcement of such law within the jurisdiction, and any other evidence that may prove or disprove that such law was a pretext for an unlawful stop within the meaning of this section.

4. An order granting a motion to exclude evidence pursuant to this section shall be appealable by the people in the same manner as an order suppressing evidence pursuant to subdivision eight of section 450.20 of this chapter, and an order denying a motion shall be appealable by the defendant pursuant to section 450.10 of this chapter.

§ 3. Section 837 of the executive law is amended by adding a new subdivision 24 to read as follows:

24. Accept information from law enforcement agencies pursuant to subdivision (c) of section eleven hundred eight of the vehicle and traffic law and make the information, including the unique identification number of the officer making the stop, publicly available online in a manner that is clear, understandable, analyzable, and accessible to the public.

§ 4. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.