STATE OF NEW YORK

3978--B

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 -- again amended on third reading, 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:

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

§ 837-y. Bias-based 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) "Bias-based profiling" means the reliance, to any degree, on actual or perceived race, color, ethnicity, national origin, immigration or citizenship status, age, religion, gender identity or expression, sexual orientation, mental or physical disability, socioeconomic status, or housing status in selecting which persons to subject to stops, in selecting which locations to subject persons to stops, or in deciding the scope or substance of law enforcement action against a person, except that an officer may consider or rely on characteristics listed in

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

LBD07238-10-4

a specific suspect description relevant to the locality and timeframe and based on trustworthy information.

(d) "Reportable encounter" means the following activities by a law enforcement officer:

(i) The stop of a vehicle that, based on a totality of the circumstances, would make a reasonable person feel that they are not free to leave or otherwise terminate the encounter;

(ii) The stop of a pedestrian that, based on a totality of the circumstances, would make a reasonable person feel that they are not free to leave or otherwise terminate the encounter;

(iii) Frisks and other types of body searches; and

(iv) Consensual or nonconsensual searches of persons, property or possessions (including vehicles) of individuals.

(e) "Political subdivision" means any county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law, that has a law enforcement agency or employs law enforcement officers.

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

3. Every law enforcement agency shall promulgate and adopt a written policy which prohibits bias-based profiling. The policy shall be made publicly available. 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 bias-based profiling. The policy shall be made publicly available. In a manner determined by the division in consultation with the attorney general, 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. As set forth in subdivision eleven of this section, and at least once annually thereafter, every law enforcement agency shall review the data it has collected pursuant to subdivision four of this section to ensure that its procedures, practices, and training effectively address and prohibit bias-based profiling.

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

(a) the number of persons stopped;

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

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

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

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

(f) whether the officer perceived the person stopped to be experiencing homelessness;

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

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

(i) the reason the stop was initiated;

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

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

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

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

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

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

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

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

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

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

(t) the approximate duration of the stop;

(u) the date, time and location of the stop; and

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

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

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

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

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

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

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

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

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

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

(b) the total amount, if any, spent on any insurance premiums paid by the political subdivision for insurance against law enforcement misconduct;

(c) the total amount, if any, that the political subdivision contributed to any central risk management fund or risk pool toward the settlement of law enforcement misconduct claims; and

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

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 bias-based 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. 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 a pattern or practice of bias-based 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. The attorney general may investigate and, if warranted, bring a civil action for equitable or declaratory relief against a law enforcement agency that fails to comply with the remaining provisions of this section.

9. In addition to a cause of action brought pursuant to subdivision eight of this section, an individual who has been the subject of an act or acts of bias-based 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 bias-based profiling. The court may award costs and reasonable attorney fees to a plaintiff who prevails in such an action. In addition, an individual may bring a civil action for equitable or declaratory relief against a law enforcement agency that fails to comply with the remaining provisions of this section.

10. 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 bias-based profiling may have pursuant to any other provision of law.

11. Each law enforcement agency and political subdivision covered by this section shall annually compile and furnish all data and information collected pursuant to subdivisions four and five of this section in a report to the division. The division, in consultation with the attorney general, 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. Information released publicly shall not reveal the identity of any individual. Any information received by the division shall be made available to the attorney general upon request. Each law enforcement agency and political subdivision covered by this section shall report all information required by subdivisions four and five of this section in accordance with the following schedule:

(a) each law enforcement agency that employs one thousand or more law enforcement officers, and each political subdivision that has such an agency, shall issue their first annual reports pursuant to subdivisions

four and five of this section no later than fourteen months after the regulations promulgated pursuant to this section have been finalized;

(b) each law enforcement agency that employs four hundred or more but less than one thousand law enforcement officers, and each political subdivision that has such an agency, shall issue their first annual reports pursuant to subdivisions four and five of this section no later than two years after the regulations promulgated pursuant to this section have been finalized;

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

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

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

13. Any local legislative body may adopt local laws through local order, and any law enforcement agency may prescribe rules and regulations, that impose additional duties and requirements upon law enforcement agencies or law enforcement officers provided such duties and requirements are consistent with the provisions of this section.

§ 2. This act shall take effect immediately.