

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.

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

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

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

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

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

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

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

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

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

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

40 (a) the number of persons stopped;

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

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

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

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

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

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

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

3 (i) the reason the stop was initiated;

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

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

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

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

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

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

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

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

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

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

26 (t) the approximate duration of the stop;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 10. Nothing in this section shall be construed as diminishing or abro-
37 gating any right, remedy or cause of action which an individual who has
38 been subject to bias-based profiling may have pursuant to any other
39 provision of law.

40 11. Each law enforcement agency and political subdivision covered by
41 this section shall annually compile and furnish all data and information
42 collected pursuant to subdivisions four and five of this section in a
43 report to the division. The division, in consultation with the attorney
44 general, shall develop and implement a plan for a computerized data
45 system for public viewing of such data and shall publish an annual
46 report on data collected for the governor, the legislature, and the
47 public. Information released publicly shall not reveal the identity of
48 any individual. Any information received by the division shall be made
49 available to the attorney general upon request. Each law enforcement
50 agency and political subdivision covered by this section shall report
51 all information required by subdivisions four and five of this section
52 in accordance with the following schedule:

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

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

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

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

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

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

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

37 § 2. This act shall take effect immediately.