



## OPERATIONS ORDER

<b>SUBJECT: DEPARTMENT POLICY REGARDING RACIAL PROFILING</b>	
<b>DATE ISSUED:</b>	<b>NUMBER:</b>
<b>03-13-02</b>	<b>11</b>

1. The New York City Police Department is committed both to the impartial enforcement of law and the protection of Constitutional rights. Therefore, to emphasize these commitments and to ensure all members of the service engage only in constitutionally sound policing practices, the Department prohibits the use of racial profiling in law enforcement actions. Racial profiling is defined as the use of race, color, ethnicity or national origin as the determinative factor for initiating police action.

2. All police-initiated enforcement actions, including but not limited to arrest, stop and question, and motor vehicle stop, will be based on the standards required by the Fourth Amendment of the U.S. Constitution or other applicable law. Officers must be able to articulate the factors which led them to take enforcement action, in particular those factors leading to reasonable suspicion for a stop and question, or probable cause for an arrest. Officers are also reminded that the use of characteristics such as religion, age, gender, gender identity, or sexual orientation as the determinative factor for taking police action is prohibited.

3. While performing their duties, members are reminded that this policy in no way precludes them from taking into account the reported race, color, ethnicity, national origin, religion, age, gender, gender identity, or sexual orientation of a specific suspect in the same way the member would use pedigree information, e.g., height, weight, age, etc., about specific suspects.

4. Commanding Officers will establish a self-inspection protocol within their command to ensure that the contents of this order are complied with. The Quality Assurance Division will include compliance with this directive in all of its command inspections. Performance in this area will also be included in Compstat review.

5. Commanding Officers will ensure that the contents of this order are brought to the attention of members of their commands.

**BY DIRECTION OF THE POLICE COMMISSIONER**

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FindLaw Codes and Statutes NY Code New York City Administrative Code(NEW) Title 14 Chapter 1 Section 14-151

# N.Y. ADC. LAW § 14-151 : NY Code - Section 14-151: Racial or Ethnic Profiling Prohibited

## Search N.Y. ADC. LAW § 14-151 : NY Code - Section 14-151: Racial or Ethnic Profiling Prohibited



**a. Definitions. As**

used in this section, the following terms have the following meanings:

1. "Racial or ethnic profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on race, ethnicity, religion or national origin as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons of a particular race, ethnicity, religion or national origin to suspected unlawful activity.

2. "Law enforcement officer" means (i) a peace officer or police officer as defined in the Criminal Procedure Law who is employed by the city of New York; or (ii) a special patrolman appointed by the police commissioner pursuant to section 14-106 of the administrative code.

b. Prohibition. Every member of the police department or other law enforcement officer shall be prohibited from racial or ethnic profiling.

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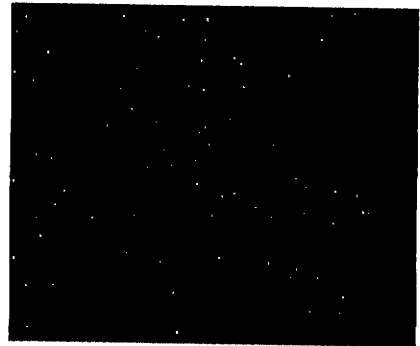
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Bill No.: A11663

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### A11663 Summary:

BILL NO A11663

SAME AS Same as S 8250

SPONSOR Rules (Espaillat)

COSPNSR

MLTSPNSR

Add S837-s, Exec L

Relates to ethnic or racial profiling.

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### A11663 Actions:

BILL NO A11663

07/06/2010 referred to governmental operations

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### A11663 Memo:

BILL NUMBER:A11663

TITLE OF BILL: An act to amend the executive law, in relation to ethnic or racial profiling

PURPOSE OR GENERAL IDEA OF BILL: Prohibits law enforcement officers from using racial and ethnic profiling, establishes a collection of data on traffic stops and creates a cause of action based on racial or ethnic profiling.

SUMMARY OF SPECIFIC PROVISION: Section 1. amends the executive law by

creating a new section 837-s;

Subdivision 1. contains definitions.

Subdivision 2. prohibits law enforcement agencies and law enforcement officers from engaging in racial or ethnic profiling.

Subdivision 3. requires every law enforcement agency to promulgate and adopt procedures for reviewing complaints of racial or ethnic profiling and taking corrective measures. A copy of each complaint and a written summary of the disposition must be forwarded to the division of criminal justice services.

Subdivision 4. requires each law enforcement agency to collect and maintain data with respect to traffic stops and persons patted down, frisked and searched.

Subdivision 5. requires every law enforcement agency to compile the data collected and forward an annual report to the division of criminal justice services by March 1st of each year.

Subdivision 6. requires the division of criminal justice services in consultation with the Attorney General to promulgate necessary forms.

Subdivision 7. requires every law enforcement agency to make documents required by this bill available to the Attorney General within 7 business days of a demand.

Subdivision 8 requires every law enforcement agency to provide all data collected from traffic stops to the division of criminal justice services. The division shall publish an annual report on law enforcement traffic stops without revealing the identity of any individuals.

Subdivision 9. states that inaction for injunctive relief and/or for damages may be brought by the Attorney General on behalf of the people against a law enforcement agency that has engaged in racial or ethnic profiling. A court may award costs and reasonable attorney fees to a prevailing plaintiff.

Subdivision 10. states that an action for injunctive relief and/or for damages may be brought by an individual that has been the subject of

racial profiling against a law enforcement agency that has engaged in racial or ethnic profiling. A court may award costs and reasonable attorney fees to a prevailing plaintiff.

Subdivision 11 provides that section 837-s does not diminish or abrogate any other right, remedy or cause of action which an individual who has been the subject of racial profiling may have.

Section 2 - contains the effective date.

JUSTIFICATION: Blacks, Hispanics and other minority groups have long been victims of biased and unjustified traffic stops, searches and frisks by law enforcement officers. The arguably unconstitutional use of race or ethnicity as a criteria has become the focus of many civil and human rights groups. The practice is commonly known as "racial profiling." The use of racial profiling has consequently had a corrosive effect on the relations between police and the minority communities.

This practice deprives minorities of their Fourth Amendment right to be free from unreasonable searches and seizures, and their right to be free from discriminations based on race guaranteed under the Fourteenth Amendment to the United States Constitution.

PRIOR LEGISLATIVE HISTORY: None

FISCAL IMPLICATIONS: To be determined

EFFECTIVE DATE: This act shall take effect within 180 days.

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## A11663 Text:

### S T A T E   O F   N E W   Y O R K

11663

I N   A S S E M B L Y

July 6, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Espaillet)  
-- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to ethnic or racial 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-s  
2     to read as follows:

3     S 837-S. ETHNIC AND RACIAL PROFILING. 1. FOR THE PURPOSES OF THIS  
4     SECTION:

5     (A) "LAW ENFORCEMENT AGENCY" MEANS AN AGENCY ESTABLISHED BY THE STATE  
6     OR A UNIT OF LOCAL GOVERNMENT WHICH EMPLOYS POLICE OFFICERS OR PEACE  
7     OFFICERS WHO ARE EMPOWERED TO AND IN THE COURSE OF THEIR OFFICIAL DUTIES  
8     LAWFULLY STOP MOTOR VEHICLES OR STOP AND FRISK INDIVIDUALS.

9     (B) "LAW ENFORCEMENT OFFICER" MEANS A POLICE OFFICER OR PEACE OFFICER  
10    EMPLOYED BY A LAW ENFORCEMENT AGENCY.

11    (C) "RACIAL OR ETHNIC PROFILING" MEANS THE STOPPING OF A MOTOR VEHI-  
12    CLE, THE STOPPING AND QUESTIONING OF AN INDIVIDUAL OR THE STOPPING AND  
13    FRISKING OF AN INDIVIDUAL BY A LAW ENFORCEMENT OFFICER THAT IS BASED  
14    UPON AN INDIVIDUAL'S ACTUAL OR APPARENT RACIAL OR ETHNIC STATUS WITHOUT  
15    REASONABLE INDIVIDUALIZED SUSPICION OR CAUSE TO LAWFULLY JUSTIFY SUCH  
16    CONDUCT.

17    2. EVERY LAW ENFORCEMENT AGENCY AND EVERY LAW ENFORCEMENT OFFICER  
18    SHALL BE PROHIBITED FROM ENGAGING IN RACIAL OR ETHNIC PROFILING.

19    3. ON OR BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, EVERY LAW ENFORCE-  
20    MENT AGENCY SHALL PROMULGATE AND ADOPT A WRITTEN POLICY WHICH PROHIBITS  
21    RACIAL OR ETHNIC PROFILING. IN ADDITION, EACH SUCH AGENCY SHALL PROMUL-  
22    GATE AND ADOPT PROCEDURES FOR THE REVIEW AND THE TAKING OF CORRECTIVE

23 ACTION WITH RESPECT TO COMPLAINTS BY INDIVIDUALS WHO ALLEGE THAT THEY  
 24 HAVE BEEN THE SUBJECT OF RACIAL OR ETHNIC PROFILING. A COPY OF EACH SUCH  
 25 COMPLAINT RECEIVED PURSUANT TO THIS SECTION AND WRITTEN NOTIFICATION OF  
 26 THE REVIEW AND DISPOSITION OF SUCH COMPLAINT SHALL BE PROMPTLY PROVIDED  
 27 BY SUCH AGENCY TO THE DIVISION.

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

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1 4. COMMENCING ON JANUARY FIRST, TWO THOUSAND TWELVE, EACH LAW ENFORCE-  
 2 MENT AGENCY SHALL, USING A FORM TO BE DETERMINED BY THE DIVISION, RECORD  
 3 AND RETAIN THE FOLLOWING INFORMATION WITH RESPECT TO LAW ENFORCEMENT  
 4 OFFICERS EMPLOYED BY SUCH AGENCY:

5 (A) THE NUMBER OF PERSONS STOPPED FOR TRAFFIC VIOLATIONS AND THE  
 6 NUMBER OF PERSONS PATTED DOWN, FRISKED AND SEARCHED;

7 (B) THE CHARACTERISTICS OF RACE, COLOR, ETHNICITY, GENDER AND AGE OF  
 8 EACH SUCH PERSON, PROVIDED THE IDENTIFICATION OF SUCH CHARACTERISTICS  
 9 SHALL BE BASED ON THE OBSERVATION AND PERCEPTION OF THE OFFICER RESPON-  
 10 SIBLE FOR REPORTING THE STOP AND THE INFORMATION SHALL NOT BE REQUIRED  
 11 TO BE PROVIDED BY THE PERSON STOPPED;

12 (C) IF A VEHICLE WAS STOPPED, THE NUMBER OF INDIVIDUALS IN THE STOPPED  
 13 MOTOR VEHICLE;

14 (D) WHETHER IMMIGRATION STATUS WAS QUESTIONED, IMMIGRATION DOCUMENTS  
 15 REQUESTED, AND IF ANY FURTHER INQUIRY WAS MADE TO THE IMMIGRATION AND  
 16 NATURALIZATION SERVICE WITH RESPECT TO ANY PERSON STOPPED OR IN THE  
 17 MOTOR VEHICLE;

18 (E) THE NATURE OF THE ALLEGED TRAFFIC VIOLATION THAT RESULTED IN THE  
 19 STOP OR THE BASIS FOR THE CONDUCT THAT RESULTED IN THE INDIVIDUAL BEING  
 20 STOPPED AND FRISKED OR SEARCHED;

21 (F) WHETHER A SEARCH WAS CONDUCTED AND, IF SO, THE RESULT OF THE  
 22 SEARCH;

23 (G) IF A SEARCH WAS CONDUCTED, WHETHER THE SEARCH WAS OF A PERSON OR  
 24 THE PERSON'S PROPERTY, AND WHETHER THE SEARCH WAS CONDUCTED PURSUANT TO  
 25 CONSENT AND IF NOT, THE BASIS FOR CONDUCTING THE SEARCH INCLUDING ANY  
 26 ALLEGED CRIMINAL BEHAVIOR THAT JUSTIFIED THE SEARCH;

27 (H) WHETHER A WARNING OR CITATION WAS ISSUED;

28 (I) WHETHER AN ARREST WAS MADE AND FOR WHAT CHARGE;

29 (J) THE APPROXIMATE DURATION OF THE STOP; AND

30 (K) THE TIME AND LOCATION OF THE STOP.

31 5. EVERY LAW ENFORCEMENT AGENCY SHALL COMPILE THE INFORMATION SET  
 32 FORTH IN SUBDIVISION FOUR OF THIS SECTION FOR THE CALENDAR YEAR INTO A  
 33 REPORT TO THE DIVISION. THE FORMAT OF SUCH REPORT SHALL BE DETERMINED BY  
 34 THE DIVISION. THE REPORT SHALL BE SUBMITTED TO THE DIVISION NO LATER  
 35 THAN MARCH FIRST OF THE FOLLOWING CALENDAR YEAR.

36 6. NOT LATER THAN JANUARY FIRST, TWO THOUSAND TWELVE, THE DIVISION, IN  
 37 CONSULTATION WITH THE ATTORNEY GENERAL, SHALL DEVELOP AND PROMULGATE:

38 (A) A FORM IN BOTH PRINTED AND ELECTRONIC FORMAT, TO BE USED BY LAW  
 39 ENFORCEMENT OFFICERS TO RECORD THE INFORMATION LISTED IN SUBDIVISION  
 40 FOUR OF THIS SECTION WHEN MAKING A TRAFFIC STOP OR WHEN STOPPING AND  
 41 FRISKING AN INDIVIDUAL; AND

42 (B) A FORM TO BE USED TO REPORT COMPLAINTS PURSUANT TO SUBDIVISION  
 43 THREE OF THIS SECTION BY INDIVIDUALS WHO BELIEVE THEY HAVE BEEN  
 44 SUBJECTED TO RACIAL OR ETHNIC PROFILING.

45 7. EVERY LAW ENFORCEMENT AGENCY SHALL MAKE AVAILABLE TO THE ATTORNEY  
 46 GENERAL, UPON SEVEN DAYS DEMAND AND NOTICE, THE DOCUMENTS REQUIRED TO BE  
 47 PRODUCED AND PROMULGATED PURSUANT TO SUBDIVISIONS THREE, FOUR AND FIVE  
 48 OF THIS SECTION.

49 8. EVERY LAW ENFORCEMENT AGENCY SHALL FURNISH ALL DATA/INFORMATION  
50 COLLECTED FROM TRAFFIC STOPS TO THE DIVISION. THE DIVISION OF CRIMINAL  
51 JUSTICE SERVICES SHALL DEVELOP AND IMPLEMENT A PLAN FOR A COMPUTERIZED  
52 DATA SYSTEM FOR PUBLIC VIEWING OF SUCH DATA AND SHALL PUBLISH AN ANNUAL  
53 REPORT ON DATA COLLECTED FOR THE GOVERNOR, THE LEGISLATURE, AND THE  
54 PUBLIC ON LAW ENFORCEMENT TRAFFIC STOPS. INFORMATION RELEASED SHALL NOT  
55 REVEAL THE IDENTITY OF ANY INDIVIDUAL.

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1 9. THE ATTORNEY GENERAL MAY BRING AN ACTION ON BEHALF OF THE PEOPLE  
2 FOR INJUNCTIVE RELIEF AND/OR DAMAGES AGAINST A LAW ENFORCEMENT AGENCY  
3 THAT IS ENGAGING IN OR HAS ENGAGED IN AN ACT OR ACTS OF RACIAL PROFILING  
4 IN A COURT HAVING JURISDICTION TO ISSUE SUCH RELIEF. THE COURT MAY AWARD  
5 COSTS AND REASONABLE ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS IN SUCH  
6 AN ACTION.

7 10. IN ADDITION TO A CAUSE OF ACTION BROUGHT PURSUANT TO SUBDIVISION  
8 NINE OF THIS SECTION, AN INDIVIDUAL WHO HAS BEEN THE SUBJECT OF AN ACT  
9 OR ACTS OF RACIAL PROFILING MAY BRING AN ACTION FOR INJUNCTIVE RELIEF  
10 AND/OR DAMAGES AGAINST A LAW ENFORCEMENT AGENCY THAT IS ENGAGED IN OR  
11 HAS ENGAGED IN AN ACT OR ACTS OF RACIAL PROFILING. THE COURT MAY AWARD  
12 COSTS AND REASONABLE ATTORNEY FEES TO A PLAINTIFF WHO PREVAILS IN SUCH  
13 AN ACTION.

14 11. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS DIMINISHING OR ABRO-  
15 GATING ANY RIGHT, REMEDY OR CAUSE OF ACTION WHICH AN INDIVIDUAL WHO HAS  
16 BEEN SUBJECT TO RACIAL OR ETHNIC PROFILING MAY HAVE PURSUANT TO ANY  
17 OTHER PROVISION OF LAW.

18 S 2. This act shall take effect on the one hundred eightieth day after  
19 it shall have become a law; provided, however, that effective immediate-  
20 ly, the addition, amendment and/or repeal of any rule or regulation  
21 necessary for the implementation of this act on its effective date is  
22 authorized and directed to be made and completed on or before such  
23 effective date.

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