



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to requiring law enforcement officers to provide notice and obtain proof of consent to search individuals

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings. The City Council finds that many New Yorkers are unaware of their constitutional rights when interacting with law enforcement officers. The Council further finds that, according to reports issued by the Civilian Complaint Review Board from 2014-2016, improper searches of persons, vehicles and homes are a persistent source of civilian complaints related to officer misconduct. According to data released by the New York State Division of Criminal Justice Services, in 2016, the NYPD arrested 18,136 individuals in New York City for class B misdemeanor marijuana possession. Many of these arrests occur in the context of the New York City Police Department's stop-and-frisk practices, in which NYPD officers sometimes instruct individuals to empty out their pockets in the absence of any legal basis for the search other than the individual's consent. Currently, there is no requirement for officers to have objective proof that consent to such searches is voluntary and informed. In adopting this law, it is the intention of the City Council to protect New Yorkers' constitutional rights by placing an affirmative obligation on law enforcement officers to inform New Yorkers of their right to be secure against unreasonable searches and seizures, as provided by the Fourth Amendment to the United States Constitution, and to create greater transparency in law enforcement practices. In doing so, it is the City Council's intention to: (1) protect the

constitutional rights of New Yorkers by ensuring that searches that are based solely on an individual's consent without any other legal basis are predicated on an individual's voluntary and informed consent, (2) shield police officers from false claims of wrongdoing, and (3) contribute to the efficiency and effectiveness of our criminal justice system.

§ 2. Chapter 1 of title 14 of the administrative code of the city of New York is amended to add a new section 14-169 to read as follows:

§14-169 Objective proof of voluntary and informed consent prior to conducting certain searches.

a. Prior to attempting a search of a person, or a person's vehicle, home, or possessions that is based solely on such person's consent to so search, and is not pursuant to a warrant or an exception to the warrant requirement, pursuant to state and federal law, or supported by probable cause, law enforcement officers, as defined in subdivision a of section 14-168, shall:

1. Articulate, using plain and simple language and a non-threatening manner, that (a) such person is being asked to voluntarily consent to a search, and (b) such person has the right to refuse or withdraw consent at any time during the search. Such officer shall ask whether the person understood the information communicated pursuant to subparagraphs (a) and (b) of this paragraph. If the primary language of the person being asked to voluntarily consent to a search is not English, law enforcement officers shall utilize interpretation services as laid out in the department's language access plan, including through the use of bilingual officers and telephonic interpretation. Law enforcement officers shall document how interpretation was provided. Members of the public shall not be used to seek informed consent; and

2. Create an audio, video, or written record of the person's voluntary and informed consent that includes: (i) a statement that he or she is freely and voluntarily providing informed consent to the officer; and (ii) a statement that he or she understands that he or she may refuse or withdraw consent at any time before or during the search. Such record, if written, shall be signed by such person if such person understands the

information communicated pursuant to paragraph 1 of this subdivision and agrees to be searched.

b. At the conclusion of a search conducted pursuant to subdivision a of this section, such officer shall:

1. Record the time, location and date of the search, whether a vehicle or home was involved, the apparent race, ethnicity, gender and age of the person searched, and the name, precinct and badge number of all law enforcement officers involved in the search; and

2. Provide a copy of the proof of consent recorded pursuant to subdivision a of this section by providing such person with (a) a copy of any such written signed record, along with a copy of the information recorded pursuant to paragraph one of subdivision b of this section; or (b) written instructions on how to obtain a copy of any such audio or video recorded pursuant to subdivision a of this section.

c. The department shall provide a copy of any audio or video recorded pursuant to subdivision a of this section within 30 days of a request made to provide such record by the person searched. The department shall preserve such audio or video recordings for no less than 3 years since the date of the search and no more than 38 months.

d. If during legal proceedings a defendant moves to suppress evidence obtained in the course of a search conducted pursuant to this section, failure to comply with this section may be considered a factor in determining the voluntariness of the alleged consent.

e. A law enforcement officer shall not be required to comply with subdivisions a or b of this section when:

1. conducting a frisk based upon reasonable suspicion that such person is armed and presents a danger to the officer's safety in the course of the officer's investigation of suspicious behavior during an otherwise lawful stop; or

2. the law enforcement officer is conducting a security search of person or possessions at the entrance to a location where such person is given notice of an impending search and where such person's entrance into the

location constitutes implied consent to be searched under an exception to the warrant requirement; or

3. an emergency exists requiring immediate action by the law enforcement officer to respond to an imminent and substantial risk of physical injury to the police or public or imminent and substantial damage to property, or to forestall the imminent escape of a suspect, or imminent destruction of evidence.

f. Beginning October 1, 2017 and every quarter thereafter, the department shall submit to the council and post on the department's website a report including the following information related to searches conducted pursuant to this section:

1. the total number of searches disaggregated by the apparent race, ethnicity, gender, and age of the person searched and by whether interpretation services were utilized;

2. the total number of searches disaggregated by patrol precinct; and further disaggregated by the following categories: a) vehicle, (b) person, (c) home, or (d) possession; and further disaggregated by the apparent race, ethnicity, gender, and age of the person searched and by whether interpretation services were utilized;

3. the number of searches disaggregated by the following categories: (a) vehicle, (b) person, (c) home, or (d) possession; and further disaggregated by the apparent race, ethnicity, gender, and age of the person searched and by whether interpretation services were utilized;

4. the number of searches in which a person declined a search conducted pursuant to this section disaggregated by the apparent race, ethnicity, gender, and age of the person who declined a search and by whether interpretation services were utilized;

5. the total number of declined searches disaggregated by patrol precinct; and further disaggregated by the following categories: a) vehicle, (b) person, (c) home, or (d) possession; and further disaggregated by the apparent race, ethnicity, gender, and age of the person searched and by whether interpretation services were utilized;

6. the number of declined searches disaggregated by the following categories: (a) vehicle, (b) person, (c)

home, or (d) possession; and further disaggregated by the apparent race, ethnicity, gender, and age of the person searched and by whether interpretation services were utilized.

g. The information required pursuant to subdivision f for each reporting period shall be stored permanently and shall be accessible from the department's website, and shall be provided in a format that permits automated processing. Each report shall include a comparison of the current reporting period to the prior four reporting periods, where such information is available.

§ 2. This local law takes effect 120 days after it becomes law.

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