

Committee on Public Safety

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THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT OF THE
GOVERNMENTAL AFFAIRS DIVISION**

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COMMITTEE ON PUBLIC SAFETY

Hon. Yusef Salaam, Chair

January 30, 2024

INT. NO. 586-A:

By the Public Advocate (Mr. Williams) and Council Members Avilés, Cabán, Louis, Hanif, Joseph, Nurse, Gutiérrez, Hudson, Sanchez, De La Rosa, Farías, Restler, Won, Brooks-Powers, Ossé, Richardson Jordan, Menin, Krishnan, Abreu, Brewer, Barron, Riley, Rivera, Feliz, Marte, Williams, Ayala, Stevens and The Speaker (Council Member Adams) (in conjunction with the Brooklyn Borough President)

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on police-civilian investigative encounters

I. INTRODUCTION

On January 30, 2024, the Committee on Public Safety, chaired by Council Member Yusef Salaam, will meet to consider whether to recommend the override of the Mayor's veto of Introduction Number ("Int. No.") 586-A, sponsored by the Public Advocate (Mr. Williams), in relation to requiring the New York City Police Department to report on police-civilian investigative encounters; and whether to recommend that the Mayor's veto messages, M 0013-2024, be filed.

On July 14, 2022, Int. No. 586 was introduced and referred to the Committee on Public Safety.¹ On March 27, 2023, the Committee on Public Safety considered testimony on Int. No. 586.² The bill was subsequently amended, and on December 20, 2023, the Committee on Public Safety considered Int. No. 586-A and passed the legislation by a vote of six in the affirmative, three in the negative, and no abstentions,³ and sent it for approval by the full Council. At the Stated Meeting of December 20, 2023, the Council approved the bill by a vote of 35 in the affirmative, nine in the negative, and three absences.⁴

On January 19, 2024, the Mayor issued a message of disapproval for Int. No. 586-A. Pursuant to Section 37(b) of the Charter, the clerk presented the Mayor's veto messages, M 0013-2024, at

¹ NYC Council Stated Meeting. July 14, 2022. Available at:
<https://legistar.council.nyc.gov/View.ashx?M=F&ID=11059900&GUID=AD899169-009B-4722-9E7F-41D7825E16CD>.

² NYC Council Committee on Public Safety Meeting. March 27, 2023. Available at:
<https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1084517&GUID=14C33AD2-377D-443E-8788-3AF09178CB0D&Options=info&Search>.

³ NYC Council Committee on Public Safety Meeting. December 20, 2023. Available at:
<https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1147782&GUID=6E777E82-E025-41AA-88FB-00FCF87FE8B9&Options=info&Search>.

⁴ NYC Council Stated Meeting. December 20, 2023. Available at:
<https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1148162&GUID=A7B76C50-AFFA-45A4-B192-C92445FC996E&Options=info&Search>.

the next Stated Meeting on January, 30, 2024, and it was referred to the Committee on Public Safety. The Mayor's veto message is appended hereto as Appendix A.

The question before the Committee on Public Safety today is whether to recommend that Int. No. 586-A be re-passed notwithstanding the objections of the Mayor, and whether to recommend that the Mayor's veto messages, M 0013-2024, be filed.

II. **BACKGROUND**

In New York, case law has developed an overarching framework used to evaluate the legality of police investigative encounters, identifying levels of police intrusion and establishing corresponding degrees of knowledge of criminality an officer must possess in order to justify action at each such level.⁵ The levels of investigative encounters are as follows:

- *Level 1 – Request for Information:* An officer can approach an individual and request information when there are "objective credible reasons" for the interference (public service or law enforcement), but not necessarily indicative of criminality.⁶
 - An officer can ask "basic, nonthreatening questions regarding, for instance, identity, address or destination."⁷
 - The "brevity of the encounter and the absence of harassment or intimidation [is] relevant in determining whether a police initiated encounter is a mere request for information."⁸
 - An officer cannot request permission to search.⁹
 - General community engagement, such as an officer saying hello, answering questions, giving directions, or talking about what is going on in the community, does not constitute a Level 1 stop.¹⁰
- *Level 2 – Common-Law Right of Inquiry:* Higher intrusion of privacy than Level 1, and can obtain explanatory information by means of short or forcible seizure. This level can be activated by a "founded suspicion that criminal activity is afoot."

⁵ *People v. DeBour*, 40 N.Y.2d 210 (1976), *People v. Hollman & Saunders* 79 NY2d 181 (1992)

⁶ *People v. Hollman & Saunders* 79 NY2d 181 (1992) at 233.

⁷ *Id.* at 209.

⁸ *Id.*

⁹ *Id.*

¹⁰ NYPD In Service Training, Plainclothes Course, Investigative Encounters; available at:

<https://www.nypdmonitor.org/wp-content/uploads/2022/09/02-In-Service-Training-Basic-Plainclothes-Course-Lesson-Plan.pdf>.

- Level 2 stop is triggered when an officer asks "more pointed questions that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing and is the focus of the officer's investigation."¹¹
- An officer can request permission to search,¹² but cannot forcibly detain.¹³
- *Level 3 – Reasonable suspicion to Stop:* Officer can forcibly stop and detain a person when the officer has a "reasonable" suspicion that the person has committed, is committing or is about to commit a felony or misdemeanor.¹⁴ An officer can conduct a frisk upon the belief that the individual is armed and dangerous.¹⁵

Level 4 – Probable Cause to Arrest: Has probable cause to arrest and search incident to lawful arrest.¹⁶

In response to concerns that the New York Police Department ("NYPD" or "the Department") disproportionately targeted Black and Latino individuals for investigative encounters, in 2002, the New York City Council ("Council") enacted a local law requiring the NYPD report data on its practice known as "Stop-Question-and-Frisk" ("SQF"), which are Level 3 encounters that require an officer to have reasonable suspicion of criminality by the person detained.¹⁷ The law required quarterly reporting on the number of SQFs conducted by the NYPD in each police precinct, disaggregated by race, gender and the number of individuals arrested or issued a summons, as well as reporting on the factors leading to such stops.¹⁸

The data gathered from these reports showed that the number of individuals stopped by the NYPD steadily rose for many years – from under 100,000 stops in 2002, to over 300,000 stops in 2004 before peaking at over 680,000 stops in 2011.¹⁹ During this period, Black and Latino individuals were subject to being stopped by the NYPD at disproportionately high rates, as those

¹¹ *Id.* at 206.

¹² *Id.*

¹³ *Id.*

¹⁴ CPL 140.50 and *Terry v. Ohio* 392 US 1 (1968)

¹⁵ *Terry v. Ohio*, 392 US 1 (1968)

¹⁶ U.S. v. Watson 423 US 411 (1976) *Chimel v. Cal.* 395 US 752 (1969)

¹⁷ NYC Admin. Code § 14-150 (a)(5); Local Law 55 of 2001.

¹⁸ *Id.*

¹⁹ New York Civil Liberties Union, "Stop and Frisk Data," available at: <https://www.nyclu.org/en/stop-and-frisk-data>

populations consistently accounted for over 80% of all stops, and of all individuals stopped nearly 90% did not lead to a summons or arrest.²⁰

The 2013 decision of *Floyd v. City of New York*, held that the manner in which the NYPD was conducting its stops violated the constitutional rights of a class of mostly Black and Latino New Yorkers, who were illegally stopped and frisked by police without requisite reasonable suspicion.²¹ Since the *Floyd* decision, as the NYPD has been subject to a federal monitor, the number of recorded stops has dramatically decreased, and the proportion of such stops conducted with sufficient legal basis has increased; however, the federal monitor recently reported concern that officers were significantly under-reporting the number of qualified encounters.²²

III. LEGISLATIVE ANALYSIS

Int. No. 586-A:

Int. No. 586-A would require the NYPD to publicly report on all police-civilian investigative encounters. Currently, the NYPD is only required to issue reports on "Level III" or "reasonable suspicion" stops where an officer has the legal authority to detain and search someone and prevent them from leaving. This legislation would expand that requirement to require reporting on all levels of police investigative encounters, disaggregated by police precinct, demographic information, factors leading to the investigative encounter, and whether the encounter resulted in any enforcement action or use-of-force incident.

Since introduction, the bill has been amended as follows. Language has been added to the definition of "investigative encounter" to clarify that encounters subject to reporting must be

²⁰ New York Civil Liberties Union, "Stop and Frisk Data;" available at: <https://www.nyclu.org/en/stop-and-frisk-data>

²¹ See *Floyd v. City of N.Y.*, 959 F. Supp. 2d 540 (SDNY 2013)

²² Venugopal, Aru, "Federal Monitor: NYPD is Not Reporting all Stop and Frisks," Gothamist, May 8, 2022; available at: <https://gothamist.com/news/federal-monitor-nypd-is-not-reporting-all-stop-and-frisk-cases>.

investigative in nature, and does not include casual conversations between police officers and members of the public. Additionally, the enactment date of the legislation was updated to provided the Department with sufficient time to implement the bill's requirements.

This bill would take effect immediately after becoming law. The first report required pursuant to the legislation would be due within 30 days of September 30, 2024.

Int. No. 586-A

By the Public Advocate (Mr. Williams) and Council Members Avilés, Cabán, Louis, Hanif, Joseph, Nurse, Gutiérrez, Hudson, Sanchez, De La Rosa, Farías, Restler, Won, Brooks-Powers, Ossé, Richardson Jordan, Menin, Krishnan, Abreu, Brewer, Barron, Riley, Rivera, Feliz, Marte, Williams, Ayala, Stevens and The Speaker (Council Member Adams) (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on police-civilian investigative encounters

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 14 of the administrative code of the city of New York, is amended by adding a new section 14-196 to read as follows:

§ 14-196 Report on investigative encounters.

a. Definitions. For purposes of this section, the following terms have the following meanings:

Investigative encounter. The term “investigative encounter” means an interaction between a member of the department and a member of the public for a law enforcement or investigative purpose. The term does not include a casual conversation or interaction between a member of the department and a member of the public unless such conversation or interaction is based on or, in the course of such conversation or interaction, an officer develops: an objective credible reason to approach; a founded suspicion that such member of the public has engaged in or will engage in criminal activity; a reasonable suspicion that such member of the public has committed, is committing, or is about to commit a crime; or a reasonable cause to believe that an offense is being or has been committed.

Level I encounter. The term “level I encounter” means an investigative encounter in which a member of the department requests information from a member of the public based on an objective credible reason for such encounter, and need not necessarily require any suspicion of criminal activity.

Level II encounter. The term “level II encounter” means an investigative encounter in which a member of the department requests information from a member of the public based on a founded suspicion that such member of the public has engaged in or will engage in criminal activity, and during which a reasonable person would feel free to leave.

Level III encounter. The term “level III encounter” means an investigative encounter in which a member of the department requests information from a member of the public based on a reasonable suspicion that such member of the public has committed, is committing, or is about to commit a crime, and during which a reasonable person would not feel free to leave.

Use of force incident. The term “use of force incident” has the same meaning as set forth in subdivision a of section 14-158.

b. Within 30 days of the quarter ending September 30, 2024, and thereafter within 30 days of the end of each quarter, the department shall submit to the mayor, the public advocate and the speaker of the council and post on its website a report for the previous quarter regarding investigative encounters conducted by the department. Such report shall include, but need not be limited to, the following:

1. The total number of level I encounters;

2. The total number of level II encounters;

3. The total number of level III encounters.

c. The information required pursuant to subdivision b of this section shall be disaggregated by the precinct in which such encounter occurred, and further disaggregated by each of the following:

1. The apparent race/ethnicity, gender, and age of the member of the public involved in the investigative encounter;

2. The reason for the investigative encounter, including the conduct or offense or other circumstances that formed the basis for the investigative encounter;

3. Whether the investigative encounter was based on observations made by a member of the department, a response to a dispatch from a police radio, information provided by a witness, or on another basis;

4. Whether a criminal or civil summons was issued to the member of the public involved in the investigative encounter, or whether an arrest of such person was made;

5. Whether a use of force incident involving such member of the public occurred during such encounter; and

6. Whether a level III encounter with such member of the public began as a level I or level II encounter, and whether a level II encounter with such member of the public began as a level I encounter.

d. The information required pursuant to this section shall be stored permanently and shall be accessible from the department's website. The information 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 immediately.

Appendix A



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

January 19, 2024

Michael McSweeney
City Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney:

Transmitted herewith is the bill disapproved by the Mayor. The bill is as follows:

Int. 586-A - A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on police-civilian investigative encounters.

Sincerely,

A handwritten signature in black ink, appearing to read "Connor Martinez".

Connor Martinez
Director of City Legislative Affairs

cc: Honorable Adrienne E. Adams



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

January 19, 2024

Hon. Michael McSweeney
City Clerk and Clerk of the Council
141 Worth Street
New York, NY 10013

Dear Mr. McSweeney,

Pursuant to Section 37 of the New York City Charter, I hereby disapprove Introductory Number 586-A, which amends the New York City Administrative Code in relation to requiring the police department to report on police-civilian investigative encounters.

Introductory Number 586-A would add a new section to the Administrative Code to require the New York Police Department (NYPD) to report the number of level one, level two and level three investigative encounters between police officers and civilians and information about each such encounter on a quarterly basis.

My Administration shares the City Council's interest in police transparency and accountability. Transparency and accountability build trust between police officers and the communities they serve, and lead to safer, fairer and more effective policing. It is in this spirit that the NYPD reports data regarding its administration and operations to the City Council, all of which is publicly available. At present, this data includes detailed information regarding level three encounters between police officers and civilians. Because level two encounters, similar to level three encounters, require suspicion of criminal activity, we have no objection to the requirement in Introductory Number 586-A to report data regarding level two encounters to the public.

The nature of a level one encounter, however, is very different from the nature of a level two or three encounter. While a level two or level three encounter requires suspicion by the officer of criminal activity by the member of the public involved in the encounter, a level one encounter does not require any suspicion of criminal activity. To the contrary, a level one encounter involves an officer requesting information from a member of the public based on any objective credible reason. They are used by officers in order to speak with potential victims, witnesses, and those

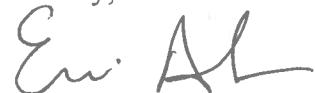
who may be in need of assistance. Officers engage in level one encounters when seeking information from local shop owners and residents regarding criminal activity in the neighborhood or when pursuing leads relating to a search for a missing child. A level one encounter would also be used to offer assistance to someone who appears to be in distress. Police officers engage in thousands of level one encounters each day, and millions each year. These encounters with potential witnesses and victims are the bedrock of community policing and are necessary to keep residents and visitors to the City safe.

To comply with the reporting requirements imposed by Introductory Number 586-A, NYPD officers would be required to document detailed information about each level one encounter. The time needed to document each such encounter would be substantial, and in the aggregate, would detract from officers' abilities to engage in law enforcement. The documentation that officers would be required to do for millions of encounters, in situations that are fluid, informal, and fast-moving, would slow down police officers, inevitably compromising public safety.

My Administration has sought to balance the need for transparency regarding City operations in general, and law enforcement activities in particular, against our obligation to create a safe and secure City for all residents, commuters and visitors. We cannot sacrifice the latter goal in furtherance of the former goal.

Accordingly, I hereby disapprove Introductory Number 586-A.

Sincerely,



Eric Adams
Mayor

Cc: Hon. Adrienne Adams

By the Public Advocate (Mr. Williams) and Council Members Avilés, Cabán, Louis, Hanif, Joseph, Nurse, Gutiérrez, Hudson, Sanchez, De La Rosa, Fariñas, Restler, Won, Brooks-Powers, Ossé, Richardson Jordan, Menin, Krishnan, Abreu, Brewer, Barron, Riley, Rivera, Feliz, Marte, Williams, Ayala, Stevens and The Speaker (Council Member Adams) (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on police-civilian investigative encounters

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 14 of the administrative code of the city of New York, is
2 amended by adding a new section 14-196 to read as follows:

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4 a. Definitions. For purposes of this section, the following terms have the following
5 meanings:

6 Investigative encounter. The term “investigative encounter” means an interaction between
7 a member of the department and a member of the public for a law enforcement or investigative
8 purpose. The term does not include a casual conversation or interaction between a member of the
9 department and a member of the public unless such conversation or interaction is based on or, in
10 the course of such conversation or interaction, an officer develops: an objective credible reason to
11 approach; a founded suspicion that such member of the public has engaged in or will engage in
12 criminal activity; a reasonable suspicion that such member of the public has committed, is
13 committing, or is about to commit a crime; or a reasonable cause to believe that an offense is being
14 or has been committed.

15 Level I encounter. The term “level I encounter” means an investigative encounter in which
16 a member of the department requests information from a member of the public based on an

1 objective credible reason for such encounter, and need not necessarily require any suspicion of
2 criminal activity.

3 Level II encounter. The term “level II encounter” means an investigative encounter in
4 which a member of the department requests information from a member of the public based on a
5 founded suspicion that such member of the public has engaged in or will engage in criminal
6 activity, and during which a reasonable person would feel free to leave.

7 Level III encounter. The term “level III encounter” means an investigative encounter in
8 which a member of the department requests information from a member of the public based on a
9 reasonable suspicion that such member of the public has committed, is committing, or is about to
10 commit a crime, and during which a reasonable person would not feel free to leave.

11 Use of force incident. The term “use of force incident” has the same meaning as set forth
12 in subdivision a of section 14-158.

13 b. Within 30 days of the quarter ending September 30, 2024, and thereafter within 30 days
14 of the end of each quarter, the department shall submit to the mayor, the public advocate and the
15 speaker of the council and post on its website a report for the previous quarter regarding
16 investigative encounters conducted by the department. Such report shall include, but need not be
17 limited to, the following:

- 18 1. The total number of level I encounters;
 - 19 2. The total number of level II encounters;
 - 20 3. The total number of level III encounters.
- 21 c. The information required pursuant to subdivision b of this section shall be disaggregated
22 by the precinct in which such encounter occurred, and further disaggregated by each of the
23 following:

DISAPPROVED

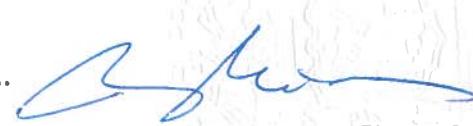
ON THE 19 DAY OF January 2024

Em A MAYOR

- 1 1. The apparent race/ethnicity, gender, and age of the member of the public involved in the investigative encounter;
- 2 2. The reason for the investigative encounter, including the conduct or offense or other circumstances that formed the basis for the investigative encounter;
- 3 3. Whether the investigative encounter was based on observations made by a member of the department, a response to a dispatch from a police radio, information provided by a witness, or on another basis;
- 4 4. Whether a criminal or civil summons was issued to the member of the public involved in the investigative encounter, or whether an arrest of such person was made;
- 5 5. Whether a use of force incident involving such member of the public occurred during such encounter; and
- 6 6. Whether a level III encounter with such member of the public began as a level I or level II encounter, and whether a level II encounter with such member of the public began as a level I encounter.
- 7 d. The information required pursuant to this section shall be stored permanently and shall be accessible from the department's website. The information 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.
- 8 § 2. This local law takes effect immediately.

I hereby certify that the above bill was passed by the Council of the City of
Wednesday, December 20, 2023
New York onreceiving the following votes:

Session 12	35
NAB, JW	Affirmative.....
LS #2190	9
11/28/23	Negative.....
Session 11	3
	Abstentions.....



Michael M. McSweeney, City Clerk, Clerk of the Council.