



Legislation Details (With Text)

File #: Int 0799-2012 **Version:** * **Name:** Requiring law enforcement officers to provide notice and obtain proof of consent to search individuals.
Type: Introduction **Status:** Filed
In control: Committee on Public Safety

On agenda: 2/29/2012

Enactment date: **Enactment #:**

Title: 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.

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Indexes:

Attachments: 1. Committee Report 10/10/12, 2. Hearing Testimony 10/10/12, 3. Hearing Transcript 10/10/12

Date	Ver.	Action By	Action	Result
2/29/2012	*	City Council	Introduced by Council	
2/29/2012	*	City Council	Referred to Comm by Council	
10/10/2012	*	Committee on Public Safety	Hearing Held by Committee	
10/10/2012	*	Committee on Public Safety	Laid Over by Committee	
12/31/2013	*	City Council	Filed (End of Session)	

Int. No. 799

By Council Members Williams, Mark-Viverito, Mendez, Lander, Jackson, Cabrera, Comrie, Dromm, James, Koslowitz, Levin, Rose, Chin, Barron, Palma, Reyna, Rodriguez, Ferreras, Lappin, Vann, Arroyo, Dickens, Brewer, Eugene, Gonzalez, Van Bramer, Mealy, King, Richards and Halloran.

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 right to privacy when interacting with law enforcement officers. In adopting this law, it is the intention of the City Council to protect New Yorkers’ constitutional rights by instituting an affirmative obligation on law enforcement officers (similar to obligations that exist in other states) to inform New Yorkers of their privacy rights when being searched by the police, and to create greater transparency in law enforcement practices. In doing so, it is the City Council’s intention to protect the personal privacy of all New

Yorkers, to shield police officers from false claims of wrongdoing, and to contribute to the efficiency and effectiveness of our criminal justice system.

§ 2. Title 14 of the Administrative Code of the City of New York is hereby amended to add a new section 14-154 to read as follows:

§14-154. Proof of consent prior to conducting searches.

a. Prior to conducting a search of a person, or of a person's vehicle, home, or belongings that is not pursuant to a warrant, incident to an arrest, or supported by probable cause, law enforcement officers (as defined in this code) shall:

1. Articulate, in a language and manner understood by the person, that the person is being asked to voluntarily consent to a search and that he or she has the right to refuse consent;

2. Create an audio or written and signed record of the person's consent, which shall include:

a. a statement that the person understands that he or she may refuse consent;

b. a statement that the person is freely and voluntarily providing consent;

c. a statement that the person understands that he or she may withdraw the consent at any time during the search;

d. the time and date of the search;

e. the name(s) and badge number(s) of all law enforcement officers involved in the search; and

f. the make and registration number of the vehicle to be searched, if applicable.

b. After providing the advisement and creating the record of consent to search, a law enforcement officer may conduct the search.

c. A copy of the consent record shall be provided to the person who consented to the search.

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

§ 3. Subdivision a of section 14-150 of title 14 of the Administrative Code of the City of New York is hereby amended by adding a new paragraph 9 to read as follows:

a. The New York City Police Department shall submit to the city council on a quarterly basis the

following materials, data and reports:

9. A report based on the records created under section 14-154 of this code. Such report shall include the total number of searches conducted under the section, broken down by each patrol precinct and by the race, ethnicity, sex, and age of the person searched. Such a report shall also include the total number of searches declined by individuals under this section.

§ 4. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 5. This local law shall take effect ninety days after its enactment into law.

PC/CJG

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