Legislation Details (With Text)

File #:	Int 1272-2016	**Version:**	*	**Name:**	Codifying the procedures offering vehicle owners the opportunity to recover possession of a vehicle seized in connection with an arrest, implemented by court order.
Type:	Introduction			**Status:**	Filed (End of Session)
				In control:	Committee on Public Safety
On agenda:	9/14/2016				
Enactment date:				**Enactment #:**	

Title: A Local Law to amend the administrative code of the city of New York, in relation to codifying the procedures offering vehicle owners the opportunity to recover possession of a vehicle seized in connection with an arrest, implemented by court order pursuant to Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002).

Sponsors:

Indexes:

Attachments: 1. Summary of Int. No. 1272, 2. September 14, 2016 - Stated Meeting Agenda with Links to Files, 3. Committee Report 9/15/16, 4. Hearing Testimony 9/15/16, 5. Hearing Transcript 9/15/16

Date	Ver.	Action By	Action	Result
9/14/2016	*	City Council	Introduced by Council	
9/14/2016	*	City Council	Referred to Comm by Council	
9/15/2016	*	Committee on Public Safety	Laid Over by Committee	
9/15/2016	*	Committee on Public Safety	Hearing Held by Committee	
12/31/2017	*	City Council	Filed (End of Session)	

Int. No. 1272

By Council Members Torres, Richards, Chin and Gentile

A Local Law to amend the administrative code of the city of New York, in relation to codifying the procedures offering vehicle owners the opportunity to recover possession of a vehicle seized in connection with an arrest, implemented by court order pursuant to Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002).

Be it enacted by the Council as follows:

Section 1. Subsection e. of section 14-140 of title 14 of the administrative code of the city of New York, as amended by chapter 503 of the year 1995, is amended to read as follows:

e. Disposition of property and money. 1. Abandoned vehicles subject to the provisions of section twelve hundred twenty-four of the vehicle and traffic law in the custody of the property clerk shall be disposed of in accordance with the provisions of such section twelve hundred twenty-four. The city may convert to its own use

in any calendar year one percent of any such abandoned vehicles not subject to subdivision two of such section twelve hundred twenty-four which are not claimed. All moneys or property other than abandoned vehicles subject to the provisions of such section twelve hundred twenty-four that shall remain in the custody of the property clerk for a period of three months without a lawful claimant entitled thereto shall, in the case of moneys, be paid into the general fund of the city established pursuant to section one hundred nine of the charter, and in the case of property other than such abandoned vehicles, be sold at public auction after having been advertised in "the City Record" for a period of ten days and the proceeds of such sale shall be paid into such fund. In the alternative, any such property may be used or converted to use for the purpose of any city, state or federal agency, or for charitable purposes, upon consultation with the human resources administration and other appropriate city agencies, and the commissioner shall report annually to the city council on the distribution of such property. Notwithstanding the foregoing, all property or money of a deceased person that shall come into the custody of the property clerk shall be delivered to a representative of the estate of such decedent and if there be no such representative, to the public administrator of the county where the decedent resided. Where moneys or property have been unlawfully obtained or stolen or embezzled or are the proceeds of crime or derived through crime or derived through the conversion of unlawfully acquired property or money or derived through the use or sale of property prohibited by law from being held, used or sold, or have been used as a means of committing crime or employed in aid or in furtherance of crime or held, used or sold in violation of law, or are the proceeds of or derived through bookmaking, policy, common gambling, keeping a gambling place or device, or any other form of illegal gambling activity or have been employed in or in connection with or in furtherance of any such gambling activity, a person who so obtained, received or derived any such moneys or property, or who so used, employed, sold or held any such moneys or property or permitted or suffered the same to be used, employed, sold or held, or who was a participant or accomplice in any such act, or a person who derives his or her claim in any manner from or through any such person, shall not be deemed to be the lawful claimant entitled to any such moneys or property except that as concerns any vehicle seized in

the manner provided for in subdivision a of section 14-140.1. [except that] [a]As concerns any vehicle taken into custody in the manner provided for in subdivision b of section 20-519 of the code, the authorized tow company shall receive from the department the cost of towing and storage as provided under subdivision c of section 20-519.

2. The commissioner, however, where the property consists of any property that has been used as a means of committing crime or employed in aid or in furtherance of crime or held, used or sold in violation of law, or gambling apparatus or any property employed in or in connection with or in furtherance of any gambling activity, or burglar tools of any description, or firearms, cartridges or explosives, or armored or bullet -proof clothing or motor vehicles, or instruments, articles or medicines for the purpose of procuring abortion or preventing conception, or wines, fermented liquors and other alcoholic beverages and the receptacles thereof, or soiled, bloody or unsanitary clothing, or solids and liquids of unknown or uncertain composition, or opium, morphine, heroin, cocaine or any of its admixtures or derivatives, and other narcotics, or hypodermic syringes and needles, or obscene pictures, prints, books, publications, effigies or statues, or any poisonous, noxious, or deleterious solids or liquids, or any property which in the opinion of the commissioner, is of slight value or the sale of which might result in injury to the health, welfare or safety of the public, may direct and empower the property clerk to destroy each and every article of such nature, subject to the procedures enumerated in section 14-140.1. If, in the opinion of the commissioner, any such property may be used or converted to use for the purpose of the department or any city, state or federal agency, such property may in the discretion of the commissioner be used or converted to use for any such purpose, and the same need not be sold or destroyed as in this section provided, subject to the procedures enumerated in section 14-140.1.

§2. Title 14 of the administrative code of the city of New York is amended by adding a new section 14-140.1 to read as follows:

§14-140.1 Hearing to contest the seizure of a vehicle. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Claimant. The term “claimant” means the person from whom a vehicle was seized by the police department, if that person was then in lawful possession of the vehicle, or the owner if different from such person, who is seeking the return of such vehicle.

b. Right to a hearing to contest the seizure of a vehicle. Following the seizure of a vehicle, at the time of the driver's arrest, as evidence of a crime or as the instrumentality of a crime, a claimant, entitled to possession of such vehicle, may contest such seizure at a hearing to be held at the office of administrative trials and hearings pursuant to its rules of practice, to the extent such rules are not in conflict with the terms of this section. Such hearing will provide the claimant with an opportunity to be heard, either in person or through counsel, as to the following issues: (i) whether probable cause existed for the arrest of the vehicle operator; (ii) whether it is likely that the city will prevail in an action to forfeit the vehicle; and (iii) whether it is necessary that the vehicle remain impounded in order to ensure its availability for a judgment of forfeiture. The burden of proof by a preponderance of the evidence as to these issues will be upon the police department, and the office of administrative trials and hearings judge may consider such hearsay and other evidence as that judge may consider reliable. The office of administrative trials and hearings judge will decide those issues by a statement of findings on the record, or by a written statement to be made a matter of record, not later than 3 business days following the close of evidence and the completion of argument, if any, at the hearing, unless both parties have consented on the record or in writing to extend the time for such statement. Absent a timely finding by the office of administrative trials and hearings judge that the police department has met the burden of proof as to the issues at the hearing, the vehicle shall be released to the claimant within 10 days without prejudice to further proceedings, including a forfeiture proceeding. Any decision made by an office of administrative trials and hearings judge shall not be binding in any way upon the criminal or supreme court in any proceeding. Likewise, any legal or factual theory advanced at hearing before the office of administrative trials and hearings by the prosecution or police department shall not be binding, nor limiting in any way, upon any decision, trial strategy or issue advanced in the criminal or supreme court.

powered by Legistar™

c. Notice of the right to a hearing. The police department shall provide notice of the right to a hearing at the time of seizure by attaching to the voucher provided to the person from whom a vehicle is seized a notice in English and Spanish as set forth below. In addition, a copy of the notice will also be sent by mail to the registered and titled owner of the vehicle within 5 business days after the seizure. The notice will appear in type at least as large as the largest entry elsewhere on the form, but in no event smaller than 8-point type, and will set forth the following:

(1) notice of the right to a hearing to retain the vehicle seized in connection with an arrest;

(2) the procedures for requesting a hearing, including the timeline for making the request, what information and documentation is required to make the request, where to submit the request, and the address of the location where the hearing will be held;

(3) the factors the police department must prove in order to retain the vehicle, and the standard of proof;

(4) notice that in some instances, a vehicle may not be forfeited if its owner did not know or have reason to know that the vehicle would be used in the commission of a crime.

d. Demand for a hearing. The claimant of a seized vehicle has the right to a hearing at the office of administrative trials and hearings, which will commence on a date and at a time, as fixed by the police department within 10 business days after receipt by the police department of a written demand for such a hearing on the form to be provided by the police department and in accordance with the instructions set forth thereon, unless the date for such hearing shall have been extended by the office of administrative trials and hearings upon a showing of good cause by either party. If the police department receives more than one such written demand, the timing of the hearing will be governed by the receipt of the first such written demand. If a written demand is mistakenly directed to the district attorney, the district attorney shall immediately forward such demand to the police department. The police department will notify the office of administrative trials and hearings, the claimant and the relevant district attorney of the date of the hearing in a notice to be sent by mail, email, or fax within 2 business days after receipt of the written demand for a hearing, to the addresses specified

for such notice by the claimant and the district attorney. The notification will provide to the claimant the address and telephone number of the office of administrative trials and hearings, and will comply with the specificity requirements for a petition as stated in section1-22 of chapter 1 of title 48 of the rules of the city of New York. It will also state that in situations where a court has determined that the vehicle is needed as evidence in a criminal proceeding, including any appeals in any such proceeding, the hearing may not be held and the vehicle may not be released during the period the vehicle is so needed.

e. Who may appear at the hearing. Only 1 person or entity may appear as claimant at the hearing, and preference shall be given to the registered owner of the vehicle.

f. Review of the hearing decision. The decision of the office of administrative trials and hearings judge will be subject to review in New York state supreme court, but the filing of an action in that court does not affect the claimant's right to a hearing before the office of administrative trials and hearings or to release of the seized vehicle in the event that the police department is found not to have satisfied the burden of proof at such hearing.

g. Retention orders. 1. If the vehicle is seized as evidence of a crime, either the person from whom the vehicle was seized, if in lawful possession of the vehicle, or its owner, if different from such person, may make a demand for a written statement from the prosecutor that retention of the vehicle as evidence is not necessary. The demand may be either in the form of a request for a hearing as provided in subdivision d, or by a written demand for a release made directly to the office of the district attorney prosecuting the criminal case.

2. The district attorney shall respond in writing no later than 7 days after receipt of a request. If the district attorney decides that continued retention of the vehicle is not necessary for the criminal case, the district attorney shall serve a written statement to that effect on the person who made the demand. If the district attorney seeks to retain the vehicle as evidence for the criminal case, an application for a retention order must be made during the 7 day period before a judge with jurisdiction over the criminal case.

3. The application for a retention order shall be supported by an affirmation from an assistant district

attorney familiar with the case. The application may be made ex parte. It must refer to this section and the standards laid out in paragraph 4 of this subdivision.

4. The judge before whom the application is made may issue the retention order if the affirmation, citing facts particular to the individual case, makes a sufficient showing that: (i) specific facts about the condition of the vehicle at the time of seizure may be relevant in the criminal case; and (ii) there are no reasonable means other than impoundment, such as photographing or testing, to preserve the evidentiary value of the vehicle for presentation to the trier of fact. If the judge ruling on the motion finds that photographing, testing, or other means are sufficient to preserve the evidence, the judge may order the vehicle to be retained for a period of time sufficient to allow law enforcement to complete such photographing, testing, or other means. The identification of evidentiary purposes of the vehicle in the prosecutor's affirmation may not be used to restrict the prosecution from making arguments in a later proceeding based on other theories.

5. An order authorizing retention of the vehicle must be served by the district attorney within 10 days following the demand upon the person who made the demand. If such an intervening retention order is issued, a hearing will not be held during the pendency of the retention order. An order denying the retention of the vehicle must likewise be served within 10 days of the date of the order upon the person who made the demand.

6. The person who made the demand may move to vacate or amend the retention order within 10 days following the receipt thereof. Service of such motion must be made in person or by registered or certified mail on the district attorney and on the defendant in the criminal case, if the defendant is a different person than the individual who made the demand. A hearing shall be held within 30 days of service of the motion. The hearing shall address the legitimacy and the necessity of the continued impoundment of the vehicle as evidence, and may not be used to obtain premature or unwarranted discovery for the defendant in the criminal case. The judge ruling on the motion may set a date, not to exceed 30 days from the date of the order, by which the police department shall release the vehicle, unless continued impoundment is otherwise authorized by law. The judge ruling on the motion may condition vacatur or amendment of the retention order on a waiver by the defendant

in the criminal case of any factual claim or defense relating to the condition of the vehicle when seized. Such waiver, if given, will bind the defendant throughout the pendency of the criminal matter.

7. Upon presentation to the police department of a written statement from a prosecutor that a vehicle is not needed as evidence, a written denial by a court of an application for a retention order, or an order vacating a retention order, the police department must, within 30 days, release the vehicle to the person who made the demand, unless continued impoundment of the vehicle is otherwise authorized by law. If the police department seeks at this time continued impoundment of the vehicle as an instrumentality of a crime, the police department shall provide notice as set forth in subdivision c of this section.

§3. This local law shall take effect 90 days after it becomes law, except that the department may promulgate any rules and regulations necessary to implement this local law on or before its effective date.

ZH
LS 767/2016
09/08/2016, 04:28P