Legislation Details (With Text)

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Title: A Local Law to amend the administrative code of the city of New York, in relation to creating a private right of action related to civil immigration detainers and cooperation with federal immigration authorities

Sponsors: Shahana K. Hanif, Shekar Krishnan, Carlina Rivera, Keith Powers, Tiffany L. Cabán, Julie Won, Lincoln Restler, Crystal Hudson, Sandy Nurse, Shaun Abreu, Pierina Ana Sanchez, Jennifer Gutiérrez, Chi A. Ossé, Alexa Avilés, Carmen N. De La Rosa, Charles Barron, Kevin C. Riley, Kristin Richardson Jordan, Nantasha M. Williams, Public Advocate Jumaane Williams

Indexes: Report Required

Attachments: 1. Summary of Int. No. 158-A, 2. Summary of Int. No. 158, 3. Int. No. 158, 4. April 14, 2022 - Stated Meeting Agenda, 5. Hearing Transcript - Stated Meeting 4-14-22, 6. Minutes of the Stated Meeting - April 14, 2022, 7. Proposed Int. No. 158-A - 2/8/23, 8. Committee Report 2/15/23, 9. Hearing Testimony 2/15/23, 10. Hearing Transcript 2/15/23

Date	Ver.	Action By	Action	Result
4/14/2022	*	City Council	Introduced by Council	
4/14/2022	*	City Council	Referred to Comm by Council	
2/15/2023	*	Committee on Immigration	Hearing Held by Committee	
2/15/2023	*	Committee on Immigration	Amendment Proposed by Comm	
2/15/2023	*	Committee on Immigration	Laid Over by Committee	
2/15/2023	*	Committee on Criminal Justice	Hearing Held by Committee	
2/15/2023	*	Committee on Criminal Justice	Amendment Proposed by Comm	
2/15/2023	*	Committee on Criminal Justice	Laid Over by Committee	
12/31/2023	A	City Council	Filed (End of Session)	

Proposed Int. No. 158-A

By Council Members Hanif, Krishnan, Rivera, Powers, Cabán, Won, Restler, Hudson, Nurse, Abreu, Sanchez, Gutiérrez, Ossé, Avilés, De La Rosa, Barron, Riley, Richardson Jordan, Williams and the Public Advocate (Mr. Williams)

A Local Law to amend the administrative code of the city of New York, in relation to creating a private right of action related to civil immigration detainers and cooperation with federal immigration authorities

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 9-131 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] a. 1. The department, or any official or employee thereof who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by sections 4-210, 9-131, 10-178, or 23-1202 of the administrative code, is liable, to such person for legal or equitable relief or any other appropriate relief, regardless of where such action occurs.

2. Any person detained in violation of this section, or whose detention by federal immigration authorities resulted, in whole or in part, from prohibited disclosures or assistance, or their direct relative, may make a claim pursuant to this section in a civil action in any court of competent jurisdiction by filing a complaint setting forth facts pertaining to the deprivation of any right created, granted or protected by sections 4-210, 9-131, 10-178, or 23-1202 of the administrative code and requesting such relief as such person considers necessary to insure the full enjoyment of such right.

3. This section does not limit or abrogate any claim or cause of action a person has under common law or pursuant to any other law or rule. Despite the availability of an alternative remedy under common law or pursuant to any other law or rule, the person has and maintains a private right of action pursuant to this section. Exhaustion of any administrative remedies is not required for a person to commence a civil action pursuant to this section. The remedies provided by this section are in addition to any other remedies that may be provided for under common law or pursuant to any other law or rule.

4. It is not a defense to liability pursuant to this section that the department, or any official or employee thereof has qualified immunity or any other substantially equivalent immunity.

5. In any civil action involving a claim made pursuant to sections 4-210, 9-131, 10-178, or 23-1202 of the administrative code, the department, or any official or employee thereof, a court shall, in addition to awarding any other relief, including declaratory, injunctive, or any other equitable relief, as such court determines to be appropriate:

(i) Award to a prevailing plaintiff on such claim any damages, including punitive damages, or at the election of such plaintiff, damages of $30,000; and

(ii) Award to such plaintiff reasonable attorney's fees, court costs, expert fees, and any other litigation costs the court deems were reasonably incurred in maintaining such civil action. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases when it chooses to factor the hourly rate into an attorney's fee award.

6. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a person must make a claim pursuant to sections 4-210, 9-131, 10-178, or 23-1202 of the administrative code in a civil action within 4 years after the alleged deprivation of a right created, granted or protected by such sections occurred.

7. In the event that there is a detainer or request for information submitted by federal immigration authorities, the department must immediately notify the detained person and their counsel, if any. The department must also provide the person and their counsel, if any, with a copy of any detainer or request for information, as well as any accompanying information, issued by federal immigration authorities. The department must also provide a written record of all exchanges of information with federal immigration authorities in relation to such person, including but not limited to:

(i) the number of times the department communicated with federal immigration authorities to verify a National Crime Information Center (NCIC) match for an individual in the department's custody;

(ii) the number of times the department communicated with federal immigration authorities about a person in the department's custody to verify or request information and who initiated communication; and

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(iii) the number of times the department communicated with federal immigration authorities to notify about an individual who falls within the "violent or serious felony conviction" definition under section 9-131.

§2. Subdivision e of section 14-154 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] a. 1. The department, or any official or employee thereof who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by sections 4-210, 14-154, 10-178, or 23-1202 of the administrative code, is liable, to such person for legal or equitable relief or any other appropriate relief, regardless of where such action occurs.

2. Any person detained in violation of this section, or whose detention by federal immigration authorities resulted, in whole or in part, from prohibited disclosures or assistance, or their direct relative, may make a claim pursuant to this section in a civil action in any court of competent jurisdiction by filing a complaint setting forth facts pertaining to the deprivation of any right created, granted or protected by sections 4-210, 14-154, 10-178, or 23-1202 of the administrative code and requesting such relief as such person considers necessary to insure the full enjoyment of such right.

3. This section does not limit or abrogate any claim or cause of action a person has under common law or pursuant to any other law or rule. Despite the availability of an alternative remedy under common law or pursuant to any other law or rule, the person has and maintains a private right of action pursuant to this section. Exhaustion of any administrative remedies is not required for a person to commence a civil action pursuant to this section. The remedies provided by this section are in addition to any other remedies that may be provided for under common law or pursuant to any other law or rule.

4. It is not a defense to liability pursuant to this section that the department, or any official or employee thereof has qualified immunity or any other substantially equivalent immunity.

5. In any civil action involving a claim made pursuant to sections 4-210, 14-154, 10-178, or 23-1202 of the administrative code, the department, or any official or employee thereof, a court shall, in addition to awarding any other relief, including declaratory, injunctive, or any other equitable relief, as such court determines to be appropriate:

(i) Award to a prevailing plaintiff on such claim any damages, including punitive damages, or at the election of such plaintiff, damages of $30,000; and

(ii) Award to such plaintiff reasonable attorney's fees, court costs, expert fees, and any other litigation costs the court deems were reasonably incurred in maintaining such civil action. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases when it chooses to factor the hourly rate into an attorney's fee award.

6. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a person must make a claim pursuant to sections 4-210, 14-154, 10-178, or 23-1202 of the administrative code in a civil action within 4 years after the alleged deprivation of a right created, granted or protected by such sections occurred.

7. In the event that there is a detainer or request for information submitted by federal immigration authorities, the department must immediately notify the detained person and their counsel, if any. The department must also provide the person and their counsel, if any, with a copy of any detainer or request for information, as well as any accompanying information, issued by federal immigration authorities. The department must also provide a written record of all exchanges of information with federal immigration authorities in relation to such person, including but not limited to:

(i) the number of times the department communicated with federal immigration authorities to verify a National Crime Information Center (NCIC) match for an individual in the department's custody;

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(ii) the number of times the department communicated with federal immigration authorities about a person in the department's custody to verify or request information and who initiated communication; and

(iii) the number of times the department communicated with federal immigration authorities to notify about an individual who falls within the "violent or serious felony conviction" definition under section 14-154.

§3. Subdivision e of section 9-205 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] a. 1. The department, or any official or employee thereof who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by sections 4-210, 9-205, 10-178, or 23-1202 of the administrative code, is liable, to such person for legal or equitable relief or any other appropriate relief, regardless of where such action occurs.

2. Any person detained in violation of this section, or whose detention by federal immigration authorities resulted, in whole or in part, from prohibited disclosures or assistance, or their direct relative, may make a claim pursuant to this section in a civil action in any court of competent jurisdiction by filing a complaint setting forth facts pertaining to the deprivation of any right created, granted or protected by sections 4-210, 9-205, 10-178, or 23-1202 of the administrative code and requesting such relief as such person considers necessary to insure the full enjoyment of such right.

3. This section does not limit or abrogate any claim or cause of action a person has under common law or pursuant to any other law or rule. Despite the availability of an alternative remedy under common law or pursuant to any other law or rule, the person has and maintains a private right of action pursuant to this section. Exhaustion of any administrative remedies is not required for a person to commence a civil action pursuant to

this section. The remedies provided by this section are in addition to any other remedies that may be provided for under common law or pursuant to any other law or rule.

4. It is not a defense to liability pursuant to this section that the department, or any official or employee thereof has qualified immunity or any other substantially equivalent immunity.

5. In any civil action involving a claim made pursuant to sections 4-210, 9-205, 10-178, or 23-1202 of the administrative code, the department, or any official or employee thereof, a court shall, in addition to awarding any other relief, including declaratory, injunctive, or any other equitable relief, as such court determines to be appropriate:

(i) Award to a prevailing plaintiff on such claim any damages, including punitive damages, or at the election of such plaintiff, damages of $30,000; and

(ii) Award to such plaintiff reasonable attorney's fees, court costs, expert fees, and any other litigation costs the court deems were reasonably incurred in maintaining such civil action. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases when it chooses to factor the hourly rate into an attorney's fee award.

6. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a person must make a claim pursuant to sections 4-210, 9-205, 10-178, or 23-1202 of the administrative code in a civil action within 4 years after the alleged deprivation of a right created, granted or protected by such sections occurred.

7. In the event that there is a detainer or request for information submitted by federal immigration authorities, the department must immediately notify the detained person and their counsel, if any. The department must also provide the person and their counsel, if any, with a copy of any detainer or request for information, as well as any accompanying information, issued by federal immigration authorities. The department must also provide a written record of all exchanges of information with federal immigration authorities in relation to such person, including but not limited to:

(i) the number of times the department communicated with federal immigration authorities to verify a National Crime Information Center (NCIC) match for an individual under the department's supervision;

(ii) the number of times the department communicated with federal immigration authorities about a person under supervision to verify or request information and who initiated communication; and

(iii) the number of times the department communicated with federal immigration authorities to notify about an individual under supervision who falls within the "violent or serious felony conviction" definition under section 9-205.

§4. This local law takes effect 60 days after it becomes law.

Session 12
IP
LS #8441
2/3/23 3:03pm

Session 11
HKA
LS #17517
Int. #2348-2021