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Int. No. 963

By Council Members Brewer, Krishnan, Salaam, Nurse, Ayala, Avilés, Cabán, Brooks-Powers, Banks, Gutiérrez, Sanchez, Hudson, Mealy and Won

A Local Law to amend the administrative code of the city of New York, in relation to the privacy of communications of individuals in the custody of the department of correction

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-167 to read as follows:

§ 9-167 Communications of incarcerated individuals. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Biometric voice information. The term "biometric voice information" means any information that is used to identify or assist in identifying an individual's voice.

Electronic communication. The term "electronic communication" has the same meaning set forth in paragraph (12) of section 2510 of title 18 of the United States code.

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Location data. The term "location data" means information related to the physical or geographical location of a person or a person's mobile communications device, regardless of the particular technological method used to obtain this information.

Voice communication. The term "voice communication" means any real-time, two-way voice communication, whether used solely for voice communication or in conjunction with video or other media.

b. Surveillance of voice communication and electronic communication. The department shall not record, monitor, or otherwise surveil voice communications or electronic communications initiated or received by individuals in the custody of the department, except pursuant to a warrant or with the express consent of at least 1 party to the voice communication or electronic communication. The department shall not condition access to voice communication services or electronic communication services by individuals in the custody of the department on any party's consent to be recorded, monitored, or otherwise surveilled. Consent must be affirmatively and expressly provided, may not be obtained through an opt-out provision, and must be obtained separately for each instance of recording, monitoring, or surveillance. To obtain consent from any individual in the custody of the department for each instance of recording, monitoring, or surveillance, the department shall:

1. Inform the incarcerated individual for whom surveillance is sought and such individual's attorney that such individual may refuse to consent to surveillance by the department without any penalty or fear of reprisal;

2. Demonstrate, in writing, to the incarcerated individual for whom surveillance is sought and such individual's attorney a clear and detailed basis of why the department is seeking to surveil such individual's voice communications or electronic communications; and

3. Provide the incarcerated individual for whom surveillance is sought a meaningful opportunity to consult with such individual's attorney before obtaining consent from such individual.

c. Restriction on location data collection and usage. The department shall not collect, purchase, retain, or disclose location data of individuals initiating voice communications or electronic communications to or receiving voice communications or electronic communications from individuals in the custody of the

department.

d. Restriction on biometric voice information collection and usage. 1. The department shall not collect, purchase, retain, or disclose any biometric voice information of individuals in the custody of the department or of individuals initiating voice communications or electronic communications to or receiving voice communications or electronic communications from individuals in the custody of the department.

2. No later than 30 days after the effective date of the local law that added this section, the department shall destroy any biometric voice information that was previously collected. The department shall not sell, disclose, or transfer any biometric voice information to any entity prior to the destruction required by this paragraph.

e. The department shall provide in writing the terms of service, including fees, for voice communications and electronic communications to all incarcerated individuals at the time of admission into custody of the department. The department shall post the terms of service on its website. Whenever the terms of service are amended, the department shall immediately provide the amended terms of service to all incarcerated individuals and post the amended terms of service on its website. The department shall ensure that the terms of service are available in English and the designated citywide languages as defined in section 23-1101.

f. The department shall not use any information collected in violation of this section in a department proceeding against an incarcerated individual.

g. Private right of action. 1. Any person whose voice communications or electronic communications were recorded, monitored, or otherwise surveilled in violation of this chapter or whose location data or biometric voice information was collected, retained, or disclosed in violation of this chapter may bring an action in any court of competent jurisdiction against the department or its contractor or subcontractor. If a court of competent jurisdiction finds that the department or its contractor or subcontractor violated a provision of subdivision b, c, or d of this section, the court may award (i) statutory damages of $15,000 per violation or, if actual damages exceed $15,000, actual damages; (ii) punitive damages; (iii) reasonable attorney's fees and

costs incurred in maintaining such civil action; and (iv) injunctive relief.

2. The private right of action provided by this section does not supplant any other claim or cause of action available to an individual under common law or by statute. The provisions of this section are in addition to any such common law and statutory remedies.

h. Report. Within 30 days after the end each quarter, the commissioner shall submit to the mayor and speaker of the council and shall post conspicuously on the department's website a report stating the number of instances during the previous quarter in which an incarcerated individual consented to surveillance of their voice communication or electronic communication, in a machine readable format.

§ 2. This local law takes effect 30 days after it becomes law. AM
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