



Legislation Text

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Int. No. 989-A

By Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Chin, Comrie, Eugene, Ferreras, Jackson, James, Koppell, Lander, Mendez, Palma, Reyna, Vann, Williams, Wills, Lappin, Rodriguez, Arroyo, Levin, Barron, Brewer, Gennaro, King and Mealy

A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the department of correction.

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 9-131 of chapter 1 of title 9 of the administrative code of the city of New York, as added by local law number 62 for the year 2011, is amended to read as follows:

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

1. “Civil immigration detainer” shall mean a detainer issued pursuant to 8 C.F.R. 287.7.

2. “Convicted of a covered crime” shall mean a final judgment of guilt entered on a [misdemeanor or felony charge in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States] covered crime, including a conditional discharge pursuant to section 410.10 of the criminal procedure law, or a comparable provision of federal law or the law of another state. [Persons] An individual shall not be considered convicted of a covered crime if that individual:

i. was adjudicated as a youthful [offenders] offender, pursuant to article [720] seven hundred twenty of the criminal procedure law, or a comparable [provision of] status pursuant to federal law or the law of another state, or a juvenile [delinquents] delinquent, as defined by subdivision one of section [301.2(1)] 301.2 of the

family court act, or a comparable [provision of] status pursuant to federal law or the law of another state [shall not be considered convicted of a crime]; or

ii. has never had a final judgment of guilt entered against him or her on a felony and has not had a final judgment of guilt entered against him or her on a misdemeanor that is a covered crime for at least ten years prior to the date of the instant arrest.

3. “Covered crime” shall mean a misdemeanor or felony charge brought in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, provided, however, that a charge brought pursuant to section 230.00 of the penal law, section 240.37 of the penal law, except when such charge relates to the patronizing of a prostitute, or subdivision one or subparagraph (i) or (iv) of paragraph (a) of subdivision two of section five hundred eleven of the vehicle and traffic law, or a comparable provision of federal law or the law of another state, shall not be deemed a covered crime.

4. “Covered criminal case” shall mean a case in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state of New York or a comparable court in another jurisdiction in the United States, where any felony charge, or a misdemeanor charge pursuant to any of the following provisions, or a comparable provision of federal law or the law of another state, is pending.

A. section 120.00 of the penal law, unless the defendant is ordered by the court to be released for failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law;

B. article one hundred thirty of the penal law;

C. section 265.01 of the penal law, provided that such charge relates to possession of a firearm, rifle, shotgun, bullet or ammunition;

D. section 215.50 of the penal law, unless the defendant is ordered by the court to be released for failure

to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; or

E. article thirty-one of the vehicle and traffic law.

5. “Department” shall mean the New York city department of correction and shall include all officers, employees and persons otherwise paid by or acting as agents of the department.

[4] 6. “Federal immigration authorities” shall mean any officer, employee or person otherwise paid by or acting as an agent of United States immigration and customs enforcement or any division thereof or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security who is charged with enforcement of the civil provisions of the immigration and nationality act.

[5] 7. i. “Pending covered criminal case” shall mean a covered criminal case [in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state of New York or a comparable court in another jurisdiction in the United States,] where judgment has not been entered [and where a misdemeanor or felony charge is pending].

ii. Notwithstanding anything to the contrary in subparagraph i of this paragraph, an individual who is a defendant in more than one case where judgment has not been entered and where a covered crime is charged, shall be deemed to be a defendant in a pending covered criminal case.

iii. Any individual whose case is disposed of with an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the criminal procedure law, or a comparable provision of federal law or the law of another state, shall not be deemed to be a defendant in a pending covered criminal case, or a case in which a covered crime is charged for purposes of subparagraph ii of this paragraph.

[A case in which the highest charge is a violation or a non-criminal infraction, including a case in which an]

iv. Any individual who has been sentenced to conditional discharge [for committing a violation or a non-criminal infraction] pursuant to section 410.10 of the criminal procedure law or a comparable provision of federal law or the law of another state, shall not be deemed to be a defendant in a pending covered criminal case, or a case in which a covered crime is charged for purposes of subparagraph ii of this paragraph.

v. Any individual who, if convicted, must be found by the court to be a youthful offender, pursuant to paragraph (b) of subdivision one of section 720.20 of the criminal procedure law, or a comparable status pursuant to federal law or the law of another state, shall not be deemed to be a defendant in a pending covered criminal case.

[6] §. “Terrorist screening database” shall mean the United States terrorist watch list or any similar or successor list maintained by the United States.

§ 2. Subparagraph i of paragraph 2 of subdivision b of section 9-131 of the administrative code of the city of New York, as added by local law number 62 for the year 2011, is amended to read as follows:

i. a search, conducted at or about the time when such individual would otherwise be released from the department’s custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates, or the department has been informed by a court, that such individual:

A. has been convicted of a covered crime;

B. is a defendant in a pending covered criminal case;

C. has an outstanding criminal warrant in the state of New York or another jurisdiction in the United States;

D. is identified as a known gang member in the database of the national crime information center or any similar or successor database maintained by the United States; or

E. is identified as a possible match in the terrorist screening database.

§ 3. Subdivision f of section 9-131 of the administrative code of the city of New York, as added by local law number 62 for the year 2011, is amended to read as follows:

f. Reporting. No later than September 30, 2012 and no later than September [30] thirtieth of each year thereafter, the department shall post a report on the department website that includes the following information for the preceding [12] twelve month period:

1. the total number of detainers lodged with the department, disaggregated to the extent possible by the reason given by federal immigration authorities for issuing the detainers, including, but not limited to, that federal immigration authorities:

i. had reason to believe that the individuals in the department's custody are subject to removal from the United States;

ii. initiated removal proceedings and served a notice to appear or other charging document on individuals in the department's custody;

iii. served a warrant of arrest for removal proceedings on individuals in the department's custody; or

iv. obtained orders of deportation or removal from the United States for individuals in the department's custody;

2. the number of individuals held pursuant to civil immigration detainers beyond the time when such individual would otherwise be released from the department's custody, disaggregated to the extent possible by the reason given by federal immigration authorities for issuing the detainers, including, but not limited to, that federal immigration authorities:

i. had reason to believe that the individuals in the department's custody are subject to removal from the United States;

ii. initiated removal proceedings and served a notice to appear or other charging document on individuals in the department's custody;

iii. served a warrant of arrest for removal proceedings on individuals in the department's custody; or

iv. obtained orders of deportation or removal from the United States for individuals in the department's custody;

[2.] 3. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers;

[3.] 4. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one felony conviction;

[4.] 5. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one misdemeanor conviction but no felony convictions;

[5.] 6. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions;

7. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers subsequent to the dismissal of the criminal case that brought the individual into the department's custody;

8. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and had an outstanding warrant of removal issued pursuant to 8 C.F.R. 241.2; or had previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1.

[6.] 9. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as known gang members in the database of the national crime information center or a successor database maintained by the United States;

[7.] 10. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as possible

matches in the terrorist screening database;

[8.] 11. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as both possible matches in the terrorist screening database and known gang members in the database of the national crime information center or a successor database maintained by the United States;

[9.] 12. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were defendants in a pending criminal case;

13. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were charged with a felony or felonies in a pending covered criminal case;

14. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were charged solely with a misdemeanor or misdemeanors in a pending covered criminal case;

[10.] 15. the amount of state criminal alien assistance funding requested and received from the federal government; [and

11.] 16. the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section.; and

17. the number of individuals held pursuant to civil immigration detainers beyond the time when such individuals would otherwise have been released from the department's custody who were not transferred to the custody of federal immigration authorities either because of the expiration of the forty-eight-hour hold period provided in 8 C.F.R. 287.7 or because federal immigration authorities disavowed an intention to assume custody.

§4. This local law shall take effect 120 days after it shall have become a law, except that the commissioner of correction shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

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