



Legislation Text

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Int. No. 486-A

By The Speaker (Council Member Mark-Viverito) and Council Members Dromm, Menchaca, Espinal, Arroyo, Chin, Constantinides, Eugene, Johnson, Koo, Lander, Levine, Richards, Rose, Rodriguez, Reynoso, Palma, Levin, Mendez, Cohen, Barron, Wills, Van Bramer, Crowley and Kallos

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 amended by local law number 22 for the year 2013, 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 or any similar federal request for detention of a person suspected of violating civil immigration law.

2. “Convicted of a [covered] violent or serious crime” shall mean a [final] judgment [of guilt] pursuant to section 1.20(15) of the criminal procedure law entered on a [covered] violent or serious 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] or a conviction under federal law or the law of another state that would constitute a “predicate felony conviction” under section 70.06(1)(b)(i) of the penal law provided that such conviction was for the equivalent of a violent or serious crime. [An individual] A person shall not be considered convicted of a [covered] violent or serious crime if that [individual] person:

i. was adjudicated as a youthful offender, pursuant to article seven hundred twenty of the criminal

procedure law, or a comparable status pursuant to federal law or the law of another state, or a juvenile delinquent, as defined by subdivision one of section 301.2 of the family court act, or a comparable status pursuant to federal law or the law of another state; 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] pursuant to section 1.20(15) of the criminal procedure law entered against him or her on a [misdemeanor that is a covered] violent or serious crime for at least [ten] five years prior to the date of the instant arrest, provided that any period of time during which the person was incarcerated for a violent or serious crime, between the time of the commission of such violent or serious crime and the instant arrest, shall be excluded in calculating such five year period and such five year period shall be extended by a period or periods equal to the time served under such incarceration.

[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] 3. “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.

[6] 4. “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. “Judicial warrant” shall mean a warrant based on probable cause and issued by a judge appointed pursuant to article III of the United States constitution or a federal magistrate judge appointed pursuant to 28 U.S.C. §631, that authorizes federal immigration authorities to take into custody the person who is the subject of such warrant.

[7. i. “Pending covered criminal case” shall mean a covered criminal case where judgment has not been entered.

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.

iv. Any individual who has been sentenced to 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, 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.]

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

7. “Violent or serious crime” shall mean:

i. a felony defined in any of the following sections of the penal law: 120.01, 120.02, 120.03, 120.04, 120.04-a(4), 120.05, 120.06, 120.07, 120.08, 120.09, 120.10, 120.11, 120.12, 120.13, 120.18, 120.25, 120.55, 120.60, 120.70, 121.12, 121.13, 125.10, 125.11, 125.12, 125.13, 125.14, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26, 125.27, 125.40, 125.45, 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.65-a, 130.66, 130.67, 130.70, 130.75, 130.80, 130.85, 130.90, 130.95, 130.96, 135.10, 135.20, 135.25, 135.35, 135.50, 135.65(2)(b), 140.17, 140.25, 140.30, 145.12, 150.05, 150.10, 150.15, 150.20, 160.05, 160.10, 160.15, 195.07, 195.08, 195.17, 215.11, 215.12, 215.13, 215.15, 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.28, 220.41, 220.43, 220.44, 220.48, 220.77, 230.05, 230.06, 230.19, 230.25(2), 230.30, 230.32,

230.33, 230.34, 235.22, 240.06, 240.55, 240.60, 240.61, 240.62, 240.63, 240.75, 241.05, 255.26, 255.27, 260.25, 260.32, 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 263.30, 265.01-a, 265.01-b, 265.02(2) through (8), 265.03, 265.04, 265.08, 265.09, 265.10, 265.11, 265.12, 265.13, 265.14, 265.16, 265.17, 265.19, 265.35(2), 270.30, 270.35, 405.16(1), 405.18, 460.22, 470.21, 470.22, 470.23, 470.24, 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, 490.37, 490.40, 490.45, 490.47, 490.50, or 490.55;

ii. a hate crime as defined in section 485.05 of the penal law, provided such hate crime constitutes a felony;

iii. a felony attempt, felony conspiracy, or felony criminal solicitation to commit any crime specified in subparagraph (i) of this paragraph, or a felony criminal facilitation of such specified crime;

iv. any felony set forth in section 600 of the vehicle and traffic law; or

v. any crime codified by the legislature subsequent to the enactment of this section that the department, in consultation with the police department, by rule determines to be a felony involving violence, force, firearms, terrorism, or endangerment or abuse of vulnerable persons, or any crime for which a change made by the legislature requires amendment of the crimes specified in this paragraph. The commissioner of correction shall submit any proposed additions to the crimes set forth in this paragraph to the speaker of the council at least sixty days prior to publishing such proposed rule.

§ 2. Subdivision b of section 9-131 of the administrative code of the city of New York, as amended by local law number 22 for the year 2013, is amended to read as follows:

b. Prohibition on honoring a civil immigration detainer. 1. The department [shall not honor a civil immigration detainer by:

i. holding an individual beyond the time when such individual would otherwise be released from the department's custody, except for such reasonable time as is necessary to conduct the search specified in paragraph two of this subdivision, or

ii. notifying federal immigration authorities of such individual's release.

2. Paragraph one of this subdivision shall not apply when:

i.]

may only honor a civil immigration detainer by holding a person beyond the time when such person would otherwise be released from the department's custody, in addition to such reasonable time as is necessary to conduct the search specified in subparagraph (ii) of this paragraph, or by notifying federal immigration authorities of such person's release, if:

i. federal immigration authorities present the department with a judicial warrant for the detention of the person who is the subject of such civil immigration detainer at the time such civil immigration detainer is presented; and

ii. 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 or any other governmental entity, that such [individual] person:

A. has been convicted of a [covered] violent or serious 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] B. is identified as a possible match in the terrorist screening database.

[ii. the search conducted pursuant to subparagraph i of this paragraph indicates, or the department has been informed by federal immigration authorities, that such individual:

A. has an outstanding warrant of removal issue pursuant to 8 C.F.R. 241.2; or

B. is or has previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1.]

[3] 2. Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to paragraph [two] one of this subdivision.

§ 3. Subdivisions e and f of section 9-131 of the administrative code of the city of New York, as amended by local law number 22 for the year 2013, are amended to read as follows:

e. No 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.

f. Reporting. No later than [September 30, 2012] October 15, 2015 and no later than [September thirtieth] October fifteenth of each year thereafter, the department shall post a report on the department website that includes the following information for the preceding twelve month period ending September thirtieth:

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

i. had reason to believe that the [individuals] persons 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] persons in the department's custody;

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

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

2. the number of [individuals] persons held pursuant to civil immigration detainees beyond the time when such [individual] person 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] persons 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] persons in the department's custody;

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

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

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

4. the number of [individuals] persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one [felony] conviction for a violent or serious crime;

[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;

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.

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;]

[10] 5. the number of [individuals] persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no [misdemeanor or felony] convictions for a violent or serious crime and were identified as possible matches in the terrorist screening database;

[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;

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;]

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

government;

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

[17] 8. the number of [individuals] persons held pursuant to civil immigration detainers beyond the time when such [individuals] persons 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. Section 9-131 of the administrative code of the city of New York, as amended by local law number 22 for the year 2013, is amended by adding a new subdivision h to read as follows:

h. Use of city land or facilities by federal immigration authorities and access to persons in custody. 1. Department personnel shall not expend time while on duty or department resources of any kind disclosing information that belongs to the department and is available to them only in their official capacity, in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person's incarceration status, release dates, court appearance dates, or any other information related to persons in the department's custody, other than information related to a person's citizenship or immigration status, unless such response or communication:

(i) relates to a person convicted of a violent or serious crime or identified as a possible match in the terrorist screening database;

(ii) is unrelated to the enforcement of civil immigration laws; or

(iii) is otherwise required by law.

2. Federal immigration authorities shall not be permitted to maintain an office or quarters on land over which the department exercises jurisdiction, for the purpose of investigating possible violations of civil immigration law; provided, however, that the mayor may, by executive order, authorize federal immigration

authorities to maintain an office or quarters on such land for purposes unrelated to the enforcement of civil immigration laws.

§5. Severability. If any provision of this local law shall be adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered.

§6. Sections 1, 2, 3 and 5 of this local law shall take effect 30 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.

§7. Section 4 of this local law shall take effect 90 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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