



Legislation Text

File #: Int 0487-2014, **Version:** A

Int. No. 487-A

By The Speaker (Council Member Mark-Viverito) and Council Members Dromm, Menchaca, Espinal, Arroyo, Chin, Constantinides, Johnson, Lander, Levine, Richards, Rose, Rodriguez, Reynoso, Palma, Levin, Mendez, Cohen, Barron, Koo, 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 police department.

Be it enacted by the Council as follows:

Section 1. Section 14-154 of chapter 1 of title 14 of the administrative code of the city of New York as added by local law number 21 for the year 2013 is amended to read as follows:

§14-154. Persons not to be detained. 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” pursuant to section 70.06(1)(b)(i) of the penal law provided that such conviction was for the equivalent of a violent or serious crime. A person shall not be considered convicted of a [covered] violent or serious crime if that 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, and further provided that for purposes of paragraph two of subdivision b of this section a person shall be considered convicted of a violent or serious crime if a judgment pursuant to section 1.20(15) of the criminal procedure law has ever been entered against him or her for a violent or serious crime.

[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. “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.

4. “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.

[6. (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, any person 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 person 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 person 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 person 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.]

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

6. “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 of correction, in consultation with the 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.

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

(i) holding a person beyond the time when such person 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 person's release.

2. Paragraph one of this subdivision shall not apply under any of the following circumstances:

(i) A]

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 person 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 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 person:

A. has an outstanding warrant of removal issued 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.]

2. Notwithstanding paragraph one of this subdivision, the department may honor a civil immigration detainer by holding an person for up to forty-eight hours, excluding Saturdays, Sundays and holidays, 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 this paragraph, if a search, conducted at or

about the time when such person 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 agency, that such person:

A. has been convicted of a violent or serious crime and has illegally re-entered the country after a previous removal or return, or

B. is identified as a possible match in the terrorist screening database;
provided, however, that if federal immigration authorities fail to present the department with a judicial warrant for such person within the period described above, such person shall be released and the department shall not notify federal immigration authorities of such person's release.

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

c. No conferral of authority. Nothing in this section shall be construed to confer any authority on any entity to hold persons on civil immigration detainers beyond the authority, if any, that existed prior to the enactment of this section.

d. No conflict with existing law. This local law supersedes all conflicting policies, rules, procedures and practices of the city of New York. Nothing in this local law shall be construed to prohibit any city agency from cooperating with federal immigration authorities when required under federal law. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.

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, 2013] 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 number of civil immigration detainers received from federal immigration authorities;
2. the number of persons held pursuant to civil immigration detainers beyond the time when such person would otherwise be released from the department's custody;
3. the number of persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers; and
4. the number of persons for whom civil immigration detainers were not honored pursuant to subdivision b of this section.

g. For the purpose of this section, any reference to a statute, rule, or regulation shall be deemed to include any successor provision.

§2. 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.

§3. This local law shall take effect 30 days after it shall have become a law, except that the commissioner shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

RJN/BC/RC
10/14/14
9:00 PM