

Int. No. 487

By The Speaker (Council Member Mark-Viverito) and Council Members Dromm, Menchaca, Espinal, Arroyo, Chin, Constantinides, Johnson, Lander, Levine, Richards, Rose, Rodriguez and Reynoso

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 21 of 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 or successor request for detention of an individual suspected of violating civil immigration laws.

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 entered against him or her on a violent or serious [misdemeanor that is a covered] crime for at least [ten] five years prior to the date of the instant arrest provided that any period of time during which an individual was incarcerated for a serious or violent crime, between the time of the commission of such serious or violent crime and the instant arrest, shall be excluded in calculating such five year period , 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 final judgment of guilt has ever been entered against him or her for a violent or serious crime.

3. “Judicial warrant” shall mean a warrant of arrest based on probable cause and issued by a judge appointed pursuant to article III of the United States constitution for violation of civil immigration laws.

[3]4. “[Covered] Violent or serious 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.] crime defined in any of the following sections of the penal law, as well as the attempt to commit any such crime as defined in section 110 of the penal law other than those classified as E felonies: 100.10, 100.13, 105.15, 105.17,

115.05, 115.08, 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, 135.50, 140.25, 140.30, 150.15, 150.20, 160.05, 160.10, 160.15, 195.17, 215.15, 215.16, 215.17, 215.51, 215.52, 220.18, 220.21, 220.41, 220.43, 220.44, 220.48, 220.77, 230.19, 230.32, 230.33, 240.55, 240.60, 240.61, 240.62, 240.63, 240.75, 255.27, 260.25, 260.32, 260.34, 263.05, 263.10, 263.11, 263.15, 263.16, 265.01-B, 265.03, 265.04, 265.09, 265.11, 265.12, 265.13, 265.14, 265.16, 265.19, 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, 490.55, or a crime defined in section 600 of the Vehicle and Traffic Law, provided that such crime constitutes a felony, or 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 individuals. The commissioner 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.

[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. “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.

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

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:]

may only honor a civil immigration detainer by 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 by notifying federal immigration authorities of such individual's release, if:

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

[(i) A]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, that such person:

A. has been convicted of a [covered] serious or violent 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 1 of this subdivision the department may honor a civil immigration detainer by holding an individual for up to forty-eight hours, excluding Saturdays, Sundays and holidays, beyond the time when such individual would otherwise be released from the department's custody if 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 serious or violent crime, or is identified as a possible match in the terrorist screening database, and

B. has previously been deported.

3. Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to 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] 2015, and no later than September thirtieth 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:

1. the number of civil immigration detainees received from federal immigration authorities;
2. the number of persons held pursuant to civil immigration detainees 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 detainees; and
4. the number of persons for whom civil immigration detainees 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.

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