

## **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The New York City Department of Correction (“DOC” or the “Department”) proposes to add seven additional felony offenses to the list of “violent or serious” crimes referenced in §§ 9-131, 14-154 and 9-205 of the Administrative Code, governing when the City may cooperate with a civil immigration detainer.

**When and where is the hearing?** The NYC DOC will hold a public hearing on the proposed rule. The public hearing will take place at 125 Worth Street, New York, NY 10013, on August 12, 2019, beginning at 10:00 a.m.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the NYC DOC through the NYC rules website at <http://rules.cityofnewyork.us>. Click on the link for “Proposed Rules.”
- **Email.** You can email comments to [Rule.Comments@doc.nyc.gov](mailto:Rule.Comments@doc.nyc.gov).
- **Mail.** You can mail comments to:  
New York City Department of Correction  
Office of Legal Affairs  
75-20 Astoria Blvd, Suite 305  
East Elmhurst, NY 11370
- **Fax.** You can fax comments to the DOC at 718-278-6002, attn.: DOC Rule Comments.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-546-0982 and saying that you would like to sign up to comment. You can also sign up in the hearing room before the hearing begins on August 12, 2019. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Comments must be received by close of business on August 12, 2019.

**What if I need assistance to participate in the hearing?** To request an accommodation, language interpretation, or to ask general accessibility questions about the event, please contact Willard Hunt at [Willard.hunt@doc.nyc.gov](mailto:Willard.hunt@doc.nyc.gov) or 718-546-3388. Advance notice is needed to allow sufficient time to arrange the accommodation, so we ask that requests for an accommodation be made by July 30, 2019.

**This location has the following accessibility option(s) available:** There is ramp access to the building and the auditorium.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of

oral comments concerning the proposed rule will be available to the public at 75-20 Astoria Blvd, Suite 305 East Elmhurst, NY 11370.

**What authorizes DOC to make this rule?** The Department's authority for this rule may be found in §§ 389(b) and 1043 of the City Charter and in §§ 9-205, 9-131, and 14-154 of the Administrative Code. This proposed rule was not included in DOC's regulatory agenda for this Fiscal Year because it was not contemplated when DOC published the agenda.

**Where can I find the DOC's rules?** The DOC rules are in title 39 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The DOC must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose**

Administrative Code § 9-131 limits when the Department of Correction ("Department") may honor immigration detainer requests by holding a person beyond the time when they would otherwise be released, and also limits the use of Department property and use of time or resources to disclose certain information to federal immigration authorities except in certain limited circumstances. The Department may honor detainers by holding a person beyond the time when they would otherwise be released only when federal immigration authorities present a judicial warrant for detention of a person and the person to whom the detainer pertains has been convicted of a violent or serious crime, as defined under Administrative Code § 9-131(a)(7), or is identified as a possible match in the terrorist screening database. In addition, the Department may disclose to federal immigration authorities certain information regarding persons convicted of a violent or serious crime or identified as a possible match in the terrorist screening database.

Administrative Code §§ 9-131(a)(7)(v) and 14-154(a)(6)(v) allow the Department to promulgate a rule, in consultation with the police department, to add additional crimes to the definition of "violent or serious crime" if those crimes are felonies that were codified or amended by the state legislature after the enactments of §§ 9-131 and 14-154 and if they involve violence, force, firearms, terrorism, or endangerment or abuse of vulnerable persons.

After consultation with the New York Police Department, the Department is proposing the following rule to add seven Penal Law offenses to the definition of "violent or serious crime."

These offenses were codified by the state legislature after the enactments of Administrative Code §§ 9-131 and 14-154 and involve violence, force, firearms, terrorism, or endangerment or abuse of vulnerable persons. The offenses are:

- Aggravated labor trafficking, Penal Law § 135.37
- Patronizing a person for prostitution in a school zone, Penal Law § 230.08
- Aggravated patronizing a minor for prostitution in the third degree, Penal Law § 230.11
- Aggravated patronizing a minor for prostitution in the second degree, Penal Law § 230.12
- Aggravated patronizing a minor for prostitution in the first degree, Penal Law § 230.13
- Sex trafficking of a child, Penal Law § 230.34-a
- Coercion in the second degree, Penal Law § 135.61

Adoption of this proposed rule will add the above offenses to the definition of “violent or serious crime” in Administrative Code §§ 9-131(a)(7), 14-154(a)(6), which limits when the Police Department may honor immigration detainees by holding a person beyond the time when they would otherwise be released, and 9-205, which limits when the Department of Probation may honor immigration detainees by holding a person beyond the time when they would otherwise be released.

The Department’s authority for this rule may be found in §§ 389(b) and 1043 of the City Charter and in §§ 9-205, 9-131, and 14-154 of the Administrative Code.

New text is underlined. Deleted text is [bracketed].

### **Proposed Rule Text**

Title 39 of the Rules of the City of New York is amended by adding a new Chapter 2, to read as follows:

#### **Chapter 2: Violent or serious crimes for purposes of honoring civil immigration detainees**

##### **§ 2-01 Additional violent or serious crimes**

**(a) The Department determines that the following Penal Law offenses shall be considered “violent or serious” crimes for purposes of §§ 9-205(a), 9-131(a)(7) and 14-154(a)(6) of the Administrative Code:**

- (1) Section 135.37, aggravated labor trafficking.**
- (2) Section 230.08, patronizing a person for prostitution in a school zone.**
- (3) Section 230.11, aggravated patronizing a minor for prostitution in the third degree.**
- (4) Section 230.12, aggravated patronizing a minor for prostitution in the second degree.**
- (5) Section 230.13, aggravated patronizing a minor for prostitution in the first degree.**
- (6) Section 230.34-a, sex trafficking of a child.**
- (7) Section 135.61, coercion in the second degree.**

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Additional Offenses Justifying Honoring of Immigration Detainer Requests**

**REFERENCE NUMBER: DOC-2**

**RULEMAKING AGENCY: Department of Correction**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

May 13, 2019  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Additional Offenses Justifying Honoring of Immigration Detainer Requests

**REFERENCE NUMBER:** 2019 RG 131

**RULEMAKING AGENCY:** Department of Corrections

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: May 13, 2019