

NYC Administrative Code

Department of Correction

§ 9-131 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 CFR § 287.7 or any similar federal request for detention of a person suspected of violating civil immigration law.
 2. "Convicted of a violent or serious crime" shall mean a judgment pursuant to section 1.20(15) of the criminal procedure law entered on a violent or serious crime 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. A person shall not be considered convicted of a 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 not had a judgment pursuant to section 1.20(15) of the criminal procedure law entered against him or her on a violent or serious crime for at least 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. "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. "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.
 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.

b. *Prohibition on honoring a civil immigration detainer.*

1. The department 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 person: A. has been convicted of a violent or serious crime, or B. is identified as a possible match in the terrorist screening database.

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

c. *No conferral of authority.* Nothing in this section shall be construed to confer any authority on any entity to hold individuals 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 1, 2018 and no later than September 1 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 June 30:

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 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 persons in the department's custody;
 - iii. served a warrant of arrest for removal proceedings on persons in the department's custody; or
 - iv. obtained orders of deportation or removal from the United States for persons in the department's custody;
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, 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 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 persons in the department's custody;
 - iii. served a warrant of arrest for removal proceedings on persons in the department's custody; or
 - iv. obtained orders of deportation or removal from the United States for persons in the department's custody;
3. the number of persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers;
4. the number of persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one conviction for a violent or serious crime;
5. the number of persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no convictions for a violent or serious crime and were identified as possible matches in the terrorist screening database;
6. the amount of state criminal alien assistance funding requested and received from the federal government;
7. the number of persons for whom civil immigration detainers were not honored pursuant to subdivision b of this section;
8. the number of persons held pursuant to civil immigration detainers beyond the time when such 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 CFR § 287.7 or because federal immigration authorities disavowed an intention to assume custody; and
9. the number of requests from federal immigration authorities concerning a person's incarceration status, release dates, court appearance dates, or any other information related to such person in the department's custody, and the number of responses honoring such requests by the department, disaggregated by:
 - i. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities;
 - ii. the number of responses to federal immigration authorities concerning a person with at least one conviction for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities; and

iii. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime who was identified as a possible match in the terrorist screening database, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities.

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

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.

(Am. L.L. 2017/228, 12/1/2017, eff. 1/30/2018)

Police Department

§ 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 CFR § 287.7 or any similar federal request for detention of a person suspected of violating civil immigration law.

2. "Convicted of a violent or serious crime" shall mean a judgment pursuant to section 1.20(15) of the criminal procedure law entered on a violent or serious crime, 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 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 not had a judgment pursuant to section 1.20(15) of the criminal procedure law entered against him or her on a violent or serious crime for at least 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. "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.

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 detainee.*

1. The department may only honor a civil immigration detainee 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 detainee at the time such civil immigration detainee 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 violent or serious crime, or B. is identified as a possible match in the terrorist screening database.

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 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 1, 2018, and no later than September 1 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 June 30:

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;
4. the number of persons for whom civil immigration detainers were not honored pursuant to subdivision b of this section; and
5. the number of requests from federal immigration authorities for such person's incarceration status, release dates, court appearance dates, or any other information related to such person in the department's custody, and the number of responses honoring such requests by the department, disaggregated by:

i. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities;

ii. the number of responses to federal immigration authorities where the person had at least one conviction for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities; and

iii. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime who was identified as a possible match in the terrorist screening database, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities.

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

(Am. L.L. 2017/228, 12/1/2017, eff. 1/30/2018)

Department of Probation

§ 9-205 Persons not to be detained.

a. For the purposes of this section, all terms shall have the same meanings as set forth in section 9-131, except that the term “department” means department of probation.

b. The department may only honor a civil immigration detainer by holding a person if:

1. 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

2. a search 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 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 violent or serious crime, or

(b) is identified as a possible match in the terrorist screening database.

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 section supersedes all conflicting policies, rules, procedures and practices of the city. Nothing in this section shall be interpreted or applied so as to create any power, duty or obligation in conflict with any applicable 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 or the department, or any official or employee thereof.

f. *Reporting.* No later than September 1, 2018, and no later than September 1 of each year thereafter, the department shall post a report on its website that includes the following information for the preceding 12-month period ending June 30:

1. the number of civil immigration detainers received from federal immigration authorities;

2. the number of persons held pursuant to civil immigration detainers;

3. the number of persons transferred to the custody of federal immigration authorities pursuant to civil immigration detainers;
4. the number of persons for whom civil immigration detainers were not honored; and
5. the number of requests from federal immigration authorities concerning a person's incarceration status, release dates, court appearance dates, scheduled appointment dates or times, or any other information related to such person, and the number of responses honoring such requests, disaggregated by:
 - i. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, scheduled appointment dates or times, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities;
 - ii. the number of responses to federal immigration authorities concerning a person with at least one conviction for a violent or serious crime, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, scheduled appointment dates or times, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities; and
 - iii. the number of responses to federal immigration authorities concerning a person with no convictions for a violent or serious crime who were identified as a possible match in the terrorist screening database, disaggregated by the number of such responses that included incarceration status, release dates, court appearance dates, scheduled appointment dates or times, or other types of information, and whether the department facilitated the transfer of such persons to the custody of federal immigration authorities.
- g. *Publication of policy required.* The department shall publish on its website its policy regarding requests for information from federal immigration authorities.

(L.L. 2017/226, 12/1/2017)

Editor's note: *Section 2 of L.L. 2017/226 provides: "This local law takes effect immediately, provided that subdivision g of section 9-205 of the administrative code of the city of New York, as added by section one of this local law, takes effect 90 days after it becomes law, and provided further that information newly required to be reported by subdivision f of section 9-205 of the administrative code of the city of New York, as added by section one of this local law, shall be required to be reported only for periods beginning 60 days after the effective date of this local law."*