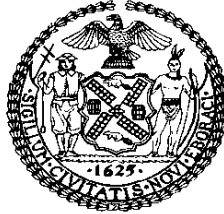


Committee on Public Safety:
Daniel Ades, *Senior Counsel*
Casie Addison, *Senior Policy Analyst*
Nevin Singh, *Financial Analyst*

Committee on the Justice System:
Maxwell Kampfner-Williams, *Counsel*
Kieshorne Dennie, *Policy Analyst*
Monica Pepple, *Financial Analyst*



THE COUNCIL OF THE CITY OF NEW YORK

**BRIEFING PAPER AND COMMITTEE REPORT OF THE
GOVERNMENTAL AFFAIRS DIVISION**

**Jeffrey Baker, Legislative Director
Brian Crow, Deputy Director, Justice Division**

COMMITTEE ON PUBLIC SAFETY

Hon. Donovan Richards, Chair

COMMITTEE ON THE JUSTICE SYSTEM

Hon. Rory Lancman, Chair

Oversight: Family Separation in Criminal Cases

February 25, 2019

INT. NO. 1349:

By Council Members Dromm, Cumbo, Richards,
Rosenthal, Gibson, Rivera

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to implement sensitive arrest policies.

ADMINISTRATIVE CODE: Adds section 14-177

INT. NO. 806: By Council Member Williams

TITLE: A Local Law in relation to creating an interagency task force to be charged with studying the obstacles faced by children of incarcerated parents, from arrest to reunification

I. **INTRODUCTION**

On February 25, 2019 the Committee on Public Safety, chaired by Council Member Donovan Richards, and the Committee on the Justice System, chaired by Council Member Rory Lancman, will hold an oversight hearing regarding family separation in criminal cases. The Committees will also hear Introduction Number 1349 (Int. No. 1349) a local law to amend the administrative code of the city of New York, in relation to requiring the police department to implement sensitive arrest policies and Introduction Number 806 (Int. No. 806), a local law in relation to creating an interagency task force to be charged with studying the obstacles faced by children of incarcerated parents, from arrest to reunification.

II. **BACKGROUND**

Parental incarceration is recognized by the Center for Disease Control as an “adverse childhood experience” that increases a child’s risk for negative outcomes in adulthood, including alcoholism, depression, illegal drug use, domestic violence, suicide attempts, and poor academic achievement.¹ Recognizing that “[m]inimizing the trauma experienced by children at the time of their parent’s arrest has the potential to lessen this risk, improving outcomes in the short and long-run,” the International Association of the Chiefs of Police (IACP) and the Bureau of Justice

¹ CDC-Kaiser Permanente ACE Study, *available at*: <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/about.html>

Services division of the U.S. Department of Justice created a model policy that would assist local law enforcement in developing measures to safeguard children when a parent is arrested.² The IACP stated that while “witnessing a parent’s arrest may appear to be a short, relatively quick life event, the trauma that it can create may be a compounding risk factor that ultimately has a detrimental impact on the child’s well-being and development.”³ Therefore, the model IACP broadly recommends that “all reasonable steps should be taken to minimize the child’s exposure to the arrest, to allow the arrestee to reassure the child and stay with the child until the caregiver is present, guarantee that follow-up with the child is performed where necessary by the law enforcement agency, partner organizations, or both.”⁴

The IACP model policy recommends a number of broad considerations, including pre-arrest planning in situations when an arrest warrant is being executed or a dispatch operator can ask a 911-caller if there is a child present;⁵ rules for the appropriate placement of a child⁶; booking procedures such as allowing an arrestee to use their cell phone to call a child and make care arrangements;⁷ and follow up visits to caregivers⁸. There are also specific recommendations regarding the arrest process itself, such as requirements that officers ask individuals specifically whether they are a parent responsible for any minor children or living with any minor children;

² Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. xi

³ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 6

⁴ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 4

⁵ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 12

⁶ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 15

⁷ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 16

⁸ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>*, p. 17

conducting the arrest outside the presence of the child when possible; and, giving the parent an opportunity to speak to the child.⁹

III. **NYPD’S CHILD BYSTANDER POLICIES**

In November 2018, the New York City Police Department (NYPD) issued a promotional booklet entitled “The 101: The NYPD and Victim Assistance”, which describes policing initiatives implemented in the last four years that seek to support crime victims through the investigation process and to build trust with communities.¹⁰ The booklet states that the NYPD has implemented reforms in training curricula, policies, and procedures based on recommendations made by vulnerable populations.¹¹ These initiatives include policies and strategies for responding to incidents where children are present such as Child Trauma Response Teams, which were developed in partnership with Safe Horizon, a nonprofit victim assistance organization and District Attorney’s Offices, and designed as a coordinated response to families after serious incidents of domestic violence to reduce the harmful impact of traumatic events on children. The booklet also references new procedures related to “Child Sensitive Arrests” and childcare after arrests.¹² To minimize the trauma children can endure during an arrest of a parent, the NYPD directs officers to make arrests “beyond the sight and earshot of children” whenever

⁹ Safeguarding the Children of Arrested Parents, International Association of Chiefs of Police, *available at*: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>, pp. 13-15

¹⁰ Official Website of the New York City Police Department “‘The 101: The NYPD and Victim Assistance,’ Highlight Four Years of Enhanced Service to New Yorkers” November 29, 2018 *available at*: <https://www1.nyc.gov/site/nypd/news/p1129/-the-101-nypd-victim-assistance-highlighting-four-years-enhanced-service-new#/0>

¹¹ The 101: The NYPD and Victim Assistance Booklet *available at* <https://cloud.3dissue.com/167796/168091/212990/101final/index.html?r=98>

¹² The 101: The NYPD and Victim Assistance Booklet *available at* <https://cloud.3dissue.com/167796/168091/212990/101final/index.html?r=98>

possible.¹³ Officers are also directed to escort children to Child Advocacy Centers at Safe Horizon locations when a designated caregiver cannot be reached immediately.¹⁴ The department communicates the wellbeing of the child and their location to the arrested parent and displays posters near all holding cells so that parents can inform the NYPD of their child care needs.¹⁵

However, the NYPD Patrol Guide contains limited information instructing officers on the procedures and considerations when making an arrest of an individual whose child is present. Section 215-01 of the Patrol Guide outlines steps officers should take when making an arrest of a person with a dependent child.¹⁶ According to the Patrol Guide, officers must inquire first if a relative or friend can care for the child, and if not, process the child as “Child Requiring Shelter.”¹⁷ Officers are then required to notify the Administration for Children’s Services (ACS) or the ACS Emergency Children’s Services after business hours and request that a representative be sent to the precinct to escort the child.¹⁸ While this section of the patrol guide acknowledges the potential harm to children, it is limited to the absence of an adult caregiver and does not include information about how officers should behave when making an arrest in the presence of a child or how to minimize the trauma of children who witness the arrest of a parent.

The Patrol Guide does provide a series of guidelines officers are expected to follow when responding to, for example, incidents involving domestic violence where children are present. According to Patrol Guide Procedure Number 202-09, each precinct has one uniformed member

¹³ <https://cloud.3dissue.com/167796/168091/212990/101final/index.html?r=98> pg 14

¹⁴ The 101: The NYPD and Victim Assistance Booklet *available at* <https://cloud.3dissue.com/167796/168091/212990/101final/index.html?r=98> pg 14

¹⁵ The 101: The NYPD and Victim Assistance Booklet *available at* <https://cloud.3dissue.com/167796/168091/212990/101final/index.html?r=98> pg 14

¹⁶ See NYPD Patrol Guide Procedure 215-01 *available at* https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide3.pdf

¹⁷ *Id.*

¹⁸ *Id.*

of service who functions solely as “Domestic Violence Prevention Officer.”¹⁹ Domestic Violence Sergeants act as the command’s primary domestic violence officer, supervise members performing domestic violence duties, and have a range of responsibilities including making recommendations to commanding officers about “child at risks” lists.²⁰ The Patrol Guide does not provide any further information of what criteria officers use to classify at-risk children or guidelines officers should follow when adding children to this list.

IV. **JAZMINE HEADLEY**

Reportedly, on December 7, 2018, Jazmine Headley went to the recently relocated Dekalb Job Center at 275 Bergen Street with her son to get her child care benefits reinstated.²¹ Ms. Headley arrived a few minutes before 10 a.m.²² At 12:20 p.m., her number was called and a case worker told her that she would have to reapply for child care benefits.²³ Ms. Headley then decided to check the status of her cash allowance, for which she had reapplied in November.²⁴ She had to take another number and wait to be called again. Her son was getting restless so she took him to a play area, but workers turned her away because he was not toilet trained.²⁵ According to reports, all the seats in the main waiting area were taken so she sat on the floor.²⁶ there was a heated exchange between Ms. Headley and two security guards, also known as HRA Peace Officers. NYPD officers were called to the center after HRA personnel asked Ms.

¹⁹ See NYPD Patrol Guide Procedure Number 202-09 available at

https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf

²⁰ See NYPD Patrol Guide Section: Duties and Responsibilities Procedure Number 202-19b pg 1 of 1 available at

https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf

²¹ “They Grabbed Her Baby and Arrested Her. Now Jazmine Headley Is Speaking Out” The New York Times, (Dec. 16, 2018) available at <https://www.nytimes.com/2018/12/16/nyregion/jazmine-headley-arrest.html>

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

Headley to leave the office but she refused.²⁷ Nearly four hours after her arrival at the job center, Ms. Headley was arrested. Video taken by bystanders and widely published in the media show Ms. Headley on the ground while police officers and security guards pried her son from her arms.²⁸

Critics have questioned whether the arrest was necessary once Ms. Headley had been removed from the HRA office. The IACP notes that [t] here may be other situations in which officers can weigh the importance of making an arrest against the trauma that it might inflict on a child who is present... the use of a citation in lieu of arrest may serve the same ends as an arrest. Use of a citation avoids the need to separate the child from his or her parent and expose the child to the arrest and eliminates the need to transfer the child to another caregiver or have him or her spend time at a law enforcement lockup until the parent is released.²⁹

Ultimately Ms. Headley was charged in criminal court with resisting arrest, obstructing governmental administration, trespass, and endangering the welfare of a child.³⁰ An order of protection prohibiting her from having any contact with her son was issued.³¹ Because of an active warrant from New Jersey that required her to be detained, she was remanded and sent to Rikers Island. All of the charges were later dismissed by the Brooklyn DA's office,³² and upon

²⁷ *Id.*

²⁸ *Id.*

²⁹ ²⁹ *Safeguarding the Children of Arrested Parents*, International Association of Chiefs of Police, *available at*: <https://www.bja.gov/Publications/IACP-SafeguardingChildren.pdf>, p. 12

³⁰ *Id.*

³¹ "NYC Officers Placed on Modified Duty After Ripping Toddler from Mother's Arms in Brooklyn", *Spectrum NY1 News*, *available at*: <https://www.ny1.com/nyc/brooklyn/news/2018/12/10/nypd-investigating-video-of-officers-removing-baby-from-mother>

³² "Charges Dropped Against Brooklyn Mother Who Had Baby Ripped from Her Arms by Police" *The New York Times*, (Dec. 11, 2018) *available at* <https://www.nytimes.com/2018/12/11/nyregion/jazmine-headley-baby-video-nypd.html?module=inline>

her transfer to New Jersey, she was put into a pretrial diversion program in which she will pay a fine and complete community service in order to have her case dismissed.³³

V. USE OF ORDERS OF PROTECTION IN CRIMINAL COURT

The Criminal Procedure Law details specific rules for when a temporary order of protection can be requested for “members of the same family or household.”³⁴ A judge “may” issue a temporary order of protection, along with any bail being set or as a condition of a release on a defendant’s own recognizance, if “good cause” is shown.³⁵ The standard to be applied by a court in whether to issue a temporary order of protection is whether there is “danger of intimidation or injury.”³⁶ This inquiry is meant to be a very specific; as one court put it “there is nothing in the legislative history ... indicating that the “best interests” of a victim are to be considered when determining whether “good cause” for issuance of an order of protection exists.”³⁷ If the temporary order of protection would exclude a defendant from their home, the court must consider “whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons.”³⁸

A temporary order of protection in criminal court may work in tandem with an order of protection from another court, generally family court. By state statute, family courts and criminal

³³ “Brooklyn mom violently separated from toddler during arrest resolves New Jersey case” CBS New York, (December 12, 2018), available at: <https://www.cbsnews.com/news/jazmine-headley-new-york-arrest-video-toddler-resolves-new-jersey-case/>

³⁴ Criminal Procedure Law § 530.11

³⁵ Criminal Procedure Law § 530.12

³⁶ *People ex rel. Klein v. Kruger*, 25 N.Y.2d 497, 255 N.E.2d 552, 307 N.Y.S.2d 207 (1969); *People ex rel. Feldman v. Warden, New York Detention Facility*, 48 A.D.2d 789, 369 N.Y.S.2d 420 (1st Dept.1975), *rev. on other grounds* 37 N.Y.2d 760, 337 N.E.2d 140, 374 N.Y.S.2d 631 (1975); *Forman*, 145 Misc.2d at 124.

³⁷ *People v VanGlahn*, 189 Misc 2d 613, 616 [NY Dist Ct 2001]

³⁸ Criminal Procedure Law § 530.12(1)(a)

courts have concurrent jurisdiction over any proceeding that involves harassment or violence between members of a family.³⁹ In general, criminal court temporary orders of protection are made “subject to family court modification” by request of the defense of attorney. This means that family court can include visitation, or require programming, to the concurrent order, but typically family courts will not remove orders of protection that have been granted by criminal courts.

There are generally two forms of temporary orders of protection – full and limited. A “full stay-away order,” means that a defendant must not have any contact with the complaining witness from the moment that is issued – including being in the same household, school, building or workplace.⁴⁰ Two small modifications exist and are often granted. The first is an “access order,” in which a defendant can go with a NYPD officer, during a proscribed two to four hour window, to the address of the complaining witness in order to collect any necessary belongings. The second is making the order “subject to incidental contact” at a specific location – for example in a shared lobby if both the defendant and complaining witness live in the same apartment building, or their children go to the same school.

A “limited order” allows the defendant to be in the presence of a complaining witness, including living together. But it increases potential criminal liability for any subsequent conduct against the complaining witness – meaning that for example if the defendant were re-arrested for menacing after allegedly threatening the complaining witness, the defendant could be additionally be charged with contempt of court for disobeying the limited order of protection.

In theory, the question of whether an order of protection is issued, and if so whether that order is a “full” or “limited,” is part of the adversarial criminal court proceeding. In particular,

³⁹ People v Koertge, 182 Misc 2d 183, 186 [NY Dist Ct 1998]

⁴⁰ Criminal Procedure Law § 530.12(1)

the District Attorney is required to make a “presentation of facts and law to support their application” for a temporary order of protection, and the defendant has the right to be heard.⁴¹ If issuing a temporary order, a court must have a “reasonable foundation” for reasons ascertainable from the record.⁴² However, courts have held that simply having an opportunity to be heard at a criminal court arraignment satisfies any due process requirements.⁴³ Thus, while there is no requirement a temporary order of protection is issued just being a district attorney requests one, advocates have indicated to the Council that one is issued in almost every instance that it is requested, resulting in a rubber stamp process that routinely separates family members.

When a temporary order of protection excludes a defendant from their home, courts have held that a more robust hearing is required.⁴⁴ In *People v. Forman*, the trial court found that “[t]he importance of defendant's interest in his home, the severity of the deprivation imposed through exclusion from the home, and, typically, the need to resolve conflicting issues of fact and credibility as to the underlying family conflict, require that a trial type hearing be provided.”⁴⁵ However, criminal courts generally push these issues to other venues. After suggesting that housing court be used for a potential eviction, family court for competing claims to a shared residence, and supreme court for an ejectment action, one court determined that “[o]f all the possible forums, the Criminal Court is the one least able to expeditiously resolve any party's claim to a particular location as constituting a residence to which that party is entitled.”⁴⁶ This creates an often insurmountably complex legal burden for an indigent defendant. Even if such a defendant can afford an attorney, it presents an extremely costly proposition.

⁴¹ *People v Forman*, 145 Misc 2d 115, 123 [Crim Ct 1989]

⁴² *Id.*

⁴³ *People v Carrington*, 12 Misc 3d 1189(A) [Crim Ct 2006]

⁴⁴ *Id.*

⁴⁵ *People v Forman*, 145 Misc 2d 115, 129 [Crim Ct 1989]

⁴⁶ *People v Carrington*, 12 Misc 3d 1189(A) [Crim Ct 2006]

The practice of pro forma issuances of temporary orders of protection, regardless of the whether or not it renders the defendant homeless, sparked a new procedure in the Bronx in April of 2017.⁴⁷ Under this procedure, any case involving parents, siblings, or relatives where the defendant and/or the complaining witness are under 21 years old, and they live in the same household, are required to have an expedited hearing. Where the arraignment judge issues a full temporary order of protection, the case must be adjourned to the specialized domestic violence part the next business day; when a temporary order of protection is issued the case must be adjourned to the following Thursday. The procedure requires that the specialized domestic violence part “will work with the parties and engage appropriate services to avoid the young person being rendered homeless. Both parties should be prepared to come to court on the next business day with as much information as possible to assist the court in making informed decisions.” The procedure attempts to address the often small amount of information available to a criminal court at arraignment. This practice is not observed in other counties.

VI. ISSUES AND CONCERNS

This hearing will explore the manner in which the Police Department and the District Attorney’s Offices take into consideration the parent child relationship and what measures they take to minimize the traumatic nature of removing a child from a parent. It will explore what information is available to the relevant parties in order to make these crucial decisions, and what can be done to ensure that these decisions are made in a responsible fashion.

VII. ANALYSIS OF INT. NO. 1349

⁴⁷ April 1st, 2017 Letter from George A. Grasso, Supervising Judge, to Bronx Criminal Court Judges.

Section 1 of Int. No. 1349 would add a new section to title 14 of the administrative code and would require the NYPD to implement a child sensitive arrest policy that is largely modeled after the IACP model. The policy would include procedures designed to minimize trauma to child bystanders and support a child bystander's physical safety and emotional well-being following an arrest. The policy would be required to be posted online and would require: advance planning when possible, prompt determinations about whether a child is present, delaying arrests to avoid the presence of a child when possible, handcuffing and questioning caregivers outside the presence of a child, providing a caregiver an opportunity to speak to the child, providing caregivers an opportunity to make alternate care arrangements, and informing ACS or partner organizations about the arrest to arrange for safe custody of the child. The bill would also require training on how to use developmentally appropriate language to communicate with a child during an arrest, the effect of trauma on a child, and the role of child welfare and other partner organizations in providing support to a child bystander. Finally, section 1 would require quarterly reporting on arrests occurring in the presence of child bystanders including the number of such arrests disaggregated by borough and precinct, the number of arrests in which handcuffs were used outside the presence of a child bystander, the number of arrests in which the NYPD coordinated with ACS or a partner organization, and the number of complaints to the CCRB, 311 or the IAB related to arrests conducted in the presence of a child bystander.

Section 2 of the bill would have it take effect six months after it becomes law.

VII. **ANALYSIS OF INT. NO. 806**

Section 1 of the bill would require an interagency task force to be created to study the obstacles faced by children of incarcerated parents, from arrest to reunification. The task force would consist of the Commissioners of the Department of Correction, Children's Services, and

the Police Department, as well as three members appointed by the Mayor with relevant expertise in the area of children of incarcerated parents, and three such members appointed by the Speaker of the City Council. These members would serve for a term of one year without compensation and would meet quarterly. The task force would invited representatives of the New York State Office of Children and Family Services, the New York State Department of Corrections and Community Supervision, and any other relevant state agency. The task force would issue a report of its findings and recommendations to the Mayor and the Speaker of the City Council within 12 months of the law's effective date, including arrest protocols for custodial parents, child centered visitations and facilities at incarceration facilities, mental health supports and services for children of incarcerated parents, and support services for incarcerated parents and their children upon reentry. The task force would terminate upon the issuance of the report.

Section 2 of the bill would have it take effect immediately.

Int. No. 806

By Council Member Williams

A Local Law in relation to creating an interagency task force to be charged with studying the obstacles faced by children of incarcerated parents, from arrest to reunification

Be it enacted by the Council as follows:

Section 1. a. There shall be an interagency task force to study the obstacles faced by children of incarcerated parents, from arrest to reunification.

b. The task force shall consist of nine members that shall be:

1. the commissioner of the department of corrections, or their designee, who shall serve as chair;

2. the commissioner of children's services, or their designee;

3. the commissioner of the police department, or their designee;

4. three members appointed by the mayor with relevant expertise in the area of children of incarcerated parents; and

5. three members appointed by the speaker of the city council with relevant expertise in the area of children of incarcerated parents.

c. The task force shall invite representatives of the New York state office of children and family services, the New York state department of corrections, and any other relevant state agency or state elected official, as identified by the task force, to participate in the development of the task force report pursuant to subdivision g of this section.

d. Members of such task force shall serve for a term of one year. Any vacancy shall be filled in the same manner as the original appointment. All members shall be appointed to the task force within 60 days of the enactment of this local law.

e. Members of the task force shall serve without compensation and shall meet no less often than on a quarterly basis.

f. No member of the task force shall be removed except for cause and upon notice and hearing by the appropriate appointing official.

g. The task force shall issue and submit a report of its findings and recommendations to the mayor and the speaker of the city council no later than 12 months after the effective date of the local law that added this section. Such report shall include recommendations in areas including, but not limited to: (i) arrest protocols for custodial parents; (ii) child-centered visitations and facilities at incarceration facilities; (iii) mental health supports and services for children of incarcerated parents; and (iv) support services for incarcerated parents and their children upon reentry.

h. The task force shall terminate upon the issuance of its final report.

§ 2. This local law takes effect immediately.

AV
LS 409
LS 758/117-2014
12/4/17

By Council Member Dromm

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to implement child sensitive arrest policies

Be it enacted by the Council as follows:

1 Section 1. Title 14 of the administrative code of the city of New York is amended by adding a
2 new section 14-177 to read as follows:

3 §14-177 Child sensitive arrest policies.

4 a. Definitions. For the purposes of this section, the following terms have the following
5 meanings:

6 Caregiver. The term “caregiver” means any individual responsible for the well-being of a
7 child at the time of an arrest, including but not limited to legal parents and guardians, relatives,
8 or other individuals providing supervision to a child.

9 Child bystander. The term “child bystander” means any unemancipated person, or
10 persons, under the age of 18, present or not, whose caregiver is arrested.

11 Partner organization. The term “partner organization” means an agency or non-profit
12 organization with the capacity to safeguard a child bystander from potential trauma.

13 Trauma. The term “trauma” means an experience that results from an event, series of
14 events, or set of circumstances that are physically or emotionally harmful or threatening on an
15 individual and that has lasting adverse effects on such individual’s functioning and physical,
16 mental, social, emotional, or spiritual well-being.

17 b. The department shall implement a child sensitive arrest policy that include procedures
18 designed to minimize trauma to child bystanders and support a child bystander’s physical safety

1 and emotional well-being following an arrest. Such policy shall posted on the department's
2 website and include, at a minimum, the following practices:

3 1. For cases in which a warrant is served or an arrest is otherwise planned in advance, the
4 establishment of cooperative agreements with the administration of children's services or a
5 partner organization to assist the department in conducting arrests where child bystanders may be
6 present.

7 2. Promptly ascertaining whether a child bystander is present, including information
8 gathered from emergency call operators.

9 3. Where practicable, reasonably delaying the execution of arrest or search warrants until
10 circumstances exists whereby a child bystander is not likely to be present at the time of the
11 police encounter. If such delay is not practicable, the coordination of such actions with the
12 administration of children's services or a partner organization.

13 4. Where practicable, handcuffing and questioning of a caregiver under arrest in a
14 location away from the child bystander's sight and hearing.

15 5. Where practicable, prior to being removed from their presence, providing an arrested
16 caregiver the opportunity to speak with a child bystander who is present. Where an arrested
17 caregiver is unable to speak with such child bystander, communicate using age appropriate
18 language to such child bystander why their caregiver was arrested and that that such child
19 bystander did nothing wrong and is safe.

20 6. Where practicable, providing objects that provide comfort to a child bystander, such
21 as toys, clothing, blankets, photographs, or food.

22 7. Where practicable, ascertaining any medical, behavioral, or psychological conditions
23 or required treatments of a bystander child

1 8. Where practicable, permitting an arrested caregiver a reasonable opportunity to make
2 alternate arrangements for the care of a child bystander. If such arrangements are not possible,
3 providing the arrested caregiver the opportunity to provide the department, the administration of
4 children’s services or a partner organization with contact information of preferred alternate
5 caregiver.

6 9. When a child bystander is not present at the time of a caregiver’s arrest, ensuring that
7 the administration of children’s services or a partner organization is informed about the arrest
8 and appropriate arrangements are made for the safe custody of the child bystander, including
9 where practicable, consulting with the arrested caregiver about logistics of arranging alternate
10 supervision of the child bystander.

11 c. Training. The department shall ensure that all members of the service receive training
12 to help minimize trauma to a child bystanders of a caregiver’s arrest. Such training shall include
13 but not be limited to the following subjects:

14 1. How to effectively use developmentally appropriate language to communicate with a
15 child during a caregiver’s arrest.

16 2. Child development and the effect of trauma on a child.

17 3. The role of child welfare and other partner organizations in providing support to a
18 child bystander.

19 d. Reporting. Within 30 days of January 1, 2020, and no later than 30 days after the end
20 of each quarter thereafter, the department shall submit to the speaker of the council, and make
21 publicly available on the department’s website, a report related to arrests occurring in the
22 presence of child bystanders. All data shall be submitted in a machine readable format. Such

1 report shall include, but need not be limited to, the following information for the preceding
2 quarter:

3 1. The number of arrests in which a child bystander was present, disaggregated by
4 borough and precinct;

5 2. The number of such arrests in which handcuffs were used on a caregiver outside of the
6 presence of such child bystander, disaggregated by borough and precinct;

7 3. The number of such arrests in which the department coordinated with the
8 administration for children’s services or a partner organization prior to or after such arrest,
9 disaggregated by borough; and

10 4. The number of complaints submitted to the civilian complaint review board, the 311
11 call center, or the department’s internal affairs bureau related to arrests conducted in the presence
12 of a child bystander.

13 § 2. This local law takes effect six months after it becomes law.

JDK
LS #8530
1/17

