Committee on Public Safety:

Daniel Ades, *Senior Counsel*

Casie Addison, *Senior* *Policy Analyst*

Nevin Singh, *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**

**Oversight: Implementation of the Right to Know Act**

**April 29, 2019**

**INT. NO. 1522:**  By Council Members Gibson and Kallos

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the civilian complaint review board to report information regarding complaints that officers failed to properly identify themselves or failed to obtain knowing and voluntary consent prior to conducting a search

 **ADMINISTRATIVE CODE:** Adds title 14-a

**T2019-4052:** By Council MemberReynoso

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York police department to report on instances in which an individual denied an officer consent to search

 **ADMINISTRATIVE CODE:** Amends subdivision b of section 14-173

1. **INTRODUCTION**

On April 29th, 2019 the Committee on Public Safety, chaired by Council Member Donovan Richards, will hold a hearing to examine the implementation of Local Law 54 of 2018 and Local Law 56 of 2018, known informally as part of the Right to Know Act. The Committee will also hear two bills: Introduction Number 1522 (“Int. No. 1522”), a local law to amend the administrative code of the city of New York, in relation to requiring the civilian complaint review board to report information regarding complaints that officers failed to properly identify themselves or failed to obtain knowing and voluntary consent prior to conducting a search; and Pre-considered Introduction Number T2019-4052, in relation to requiring the New York Police Department (NYPD) to report on instances in which an individual denied an officer consent to search. Those expected to testify include representatives of the NYPD, the Civilian Review Complaint Board (“CCRB”), advocates, and members of the public.

1. **BACKGROUND**

At the peak of the stop question and frisk era in 2011, the NYPD made nearly 700,000 stops of civilians. 84% of the people stopped were Black or Latino.[[1]](#footnote-1) Advocates against the practice believed it disproportionately and unfairly targeted young men of color. A class action lawsuit was filed in federal court alleging that the manner by which the department used stop, question, and frisk was in violation of fourth and fourteenth amendments of the United States Constitution.[[2]](#footnote-2) In 2013, a federal judge ruled that the NYPD’s aggressive use of such stops were conducted in racially discriminatory manner and were unconstitutional.[[3]](#footnote-3) In her order, the judge required the City to implement reforms including the use of body-worn cameras, which would be supervised by a court-appointed monitor.[[4]](#footnote-4)

 Additionally, the New York City Council and community advocates engaged in a robust campaign against stop, question, and frisk practices. The campaign led to the introduction of the Community Safety Act of 2012, a package of four bills aimed at prohibiting discriminatory police practices, and increasing accountability and transparency of the NYPD.[[5]](#footnote-5) Two of the four bills became law on January 1, 2014. The remaining two bills were re-introduced in 2014 and were passed by the Council on December 19, 2017 are known as the Right to Know Act.

1. **THE RIGHT TO KNOW ACT**

*Identification of Officers*

Local Law 54 of 2018 requires police officers to identify themselves during certain street encounters with civilians. In general, the rules applied to officers during street encounters are based on the level of encounter with the civilian, a framework that was derived from a Court of Appeals decision, People v. DeBour 40 NY 2d 210 (1976). The level of encounter is based on the amount of information an officer has at the time of the officer’s actions and is categorized from Level 1 through Level 4.

**Level 1: Request for Information.** The officer has an objective basis to approach an individual and ask for basic information such as the individual’s name and destination, but the individual is free to leave at any time.

**Level 2: Common Law Right of Inquiry.** The officer has a founded suspicion of criminal activity and may ask more accusatory questions such as “do you have any weapons?” but the individual is free to leave without answering.

**Level 3: Reasonable Suspicion.** An officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime. The person is not free to leave and the officer may frisk for weapons and in some situations, conduct a search.

**Level 4: Probable Cause to Arrest**. The individual is not free to leave and may be immediately detained, searched, and arrested.

 With respect to street encounters, the Right to Know act applies to level 2 and level 3 stops[[6]](#footnote-6), defined as “noncustodial questioning” and “pedestrian stops where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter at will.”[[7]](#footnote-7) In addition, the law applies to frisks, searches of persons or property including vehicles, roadblocks or checkpoints, home searches, and investigatory questioning of witnesses or victims.

During these encounters, the law requires police officers to provide the individual with the officers’ name, rank, and command, and provide an explanation for the stop, unless providing such information would impair a criminal investigation.[[8]](#footnote-8) In addition, the officer must offer a business card that contains the officer’s name, rank, and shield number as well as a phone number for the 311 customer service center that a person can call to submit comments about the encounter, with some exceptions.[[9]](#footnote-9)

In order to comply with the law, the NYPD created preprinted business cards that also contain a link to a website that provides information on how to obtain body camera footage and stop report, as well as make a complaint.[[10]](#footnote-10)

*Consent to Search Encounters*

Local Law 56 of 2018 required the NYPD to develop and provide guidance for its officers regarding consent searches, and issue quarterly reports.[[11]](#footnote-11) Consent searches refer to circumstances in which an officer may only conduct a search with the individual’s consent, which is all encounters in which the officer does not already have probable cause to arrest, including level 1, 2, and 3 encounters.

The Right to Know Act requires the department to specify conduct for articulating, using plain and simple language, that the person is being asked to voluntarily, knowingly and intelligently consent to a search and explaining that such search will not be conducted if the person refuses to provide consent. In addition, the law requires officers to secure consent without threats or promises, affirm that the person understood what was being communicated, refrain from conducing the search if the person does not consent, and utilize interpretation services when communicating with a person with limited English proficiency.[[12]](#footnote-12)

Officers equipped with a body worn camera are required to record the information communicated, the person’s response, and offer the individual information of how to obtain a copy of the video.[[13]](#footnote-13) Any consent not captured on a body worn camera must be obtained in writing. The department is required to provide a copy of the video within 90 days of the request, or in 120 days for extenuating circumstances.[[14]](#footnote-14) An officer who has conducted a consented search is required to document the time, location, date of search, and the race/ethnicity, gender, and age of the person who has been subject to the search as well as the officer’s name, precinct and shield number.[[15]](#footnote-15)

Subsequent to passage of the laws, the NYPD updated the patrol guide to reflect the manner in which officers are instructed to request consent. The instructions are as follows[[16]](#footnote-16):

You may request consent to search; the consent must be voluntarily given.

1. Ask for consent to search in a manner that elicits a clear ‘yes’ or ‘no’ response. When seeking consent, make clear that the search will not occur if the person does not consent. For example, in a non-threatening manger and without making promises, you may ask the following: “*I can only search you, if you consent. Do you understand? May I search you?”*
2. If a person does not consent to a search, you cannot conduct a search.
3. If you are seeking consent to search, you must video record the request and the person’s response, if you have a Body-Worn Camera.
4. Document the time, location, and date of such request, consent, refusal, and search (if performed), and the apparent race, ethnicity, gender, and age of the person who was the subject of such request and search, and your name, precinct, tax number and/or shield number on the [consent search report]
5. Offer the person who is the subject of the request a **RIGHT TO KNOW BUSINESS CARD**, as appropriate, in all cases, and, if applicable, provide information on how to obtain a copy of the video record of the request and search (if performed).

The law also requires the NYPD to report quarterly on the number of consent searches conducted during the preceding quarter, disaggregated by race, age, and gender. During the last quarter of 2018[[17]](#footnote-17) the NYPD documented 419 requests to search and in 368 of those instances the individual consented to the search. 86.87% of people from whom officers requested consent to search were Black or Latino, nearly 90% were male, and 55% were between the ages of 10-29.[[18]](#footnote-18)

**Officer Requests to Search: October 19- December 31, 2019**

|  |  |
| --- | --- |
| **Race** |  |
| American Indian/ Alaskan Native | 3 (0.72%) |
| Asian/Pacific Islander | 11 (2.63%) |
| Black | 240 (57.28%) |
| Hispanic | 124 (29.59%) |
| White | 39 (9.31%) |
| Unknown | 2 (.48%) |
| **Total** | **419** |

|  |  |
| --- | --- |
| **Age** |  |
| 10-19 | 90 (21.48%) |
| 20-29 | 140 (33.41%) |
| 30-39 | 64 (15.27%) |
| 40-49 | 59 (14.08%) |
| 50-59 | 25 (5.97%) |
| 60-69 | 13 (3.10%) |
| Unk. | 28 (6.68%) |
| **Total** | **419** |

|  |  |
| --- | --- |
| **Gender** |  |
| Female | 41 (9.79%) |
| Male | 376 (89.74) |
| Unknown | 2 (.48%) |
| **Total** | **419** |

1. **ISSUES AND CONCERNS**

This hearing will address the implementation of the Right to Know Act, including the extent to which officers have received appropriate training and instruction and are following the requirements of the new law. In addition, some of the key topics will include the effectiveness of these civilian encounters as law enforcement tools to stop violent crime, as well as the continued racially disproportionate use of these requests to search. The hearing will also address the question of whether the high percentage of individuals who consent to a voluntary search has implications for the means by which consent is obtained and whether the voluntary nature of the search is being effectively communicated.

1. **ANALYSIS OF INT. NO. 1522**

Section 1 of the bill would add a new title 14-a to the Administrative Code of the City of New York, entitled Civilian Complaint Review Board. The bill would add a new section 14-5001 entitled “required information on officer identification and consent searches.” It would require the civilian complaint review board to report on the number of complaints alleging a violation of section 14-174 in total and disaggregated by the number of such complaints that were decided on the merits, the number of such complaints that were substantiated, the number of such complaints that were exonerated, the number of such complaints that were unfounded, and the number of such complaints for which body camera footage recorded the interaction. It would also require reporting on these complaints, disaggregated by the violation type and further disaggregated by the above case outcomes, where violation type is defined as: an officer’s failure to identify himself or herself to the person who is a subject of law enforcement activity; a failure to provide an explanation for the law enforcement activity; a failure to provide a business card or an alternative to a pre-printed business card pursuant to paragraphs (4) and (5) of subdivision 14-174 (b) to the subject of a law enforcement activity or in the case of a minor, to the parent, legal guardian, or responsible adult who is present with the minor subject.

Additionally, the bill would require the civilian complaint review board to report on complaints alleging a violation of administrative code section 14-173, in total and disaggregated by case outcomes, as well as violation type, defined as a failure of the officer to articulate that the person who is the subject of the search is being asked to voluntarily, knowingly and intelligently consent to such search; a failure of the officer to explain that a search will not be conducted if the person refuses to consent, a failure of the officer to use appropriate language services in order to obtain knowing, voluntary and intelligent consent; the use of threats or promises in order to obtain consent to search; conducting a search without obtaining consent; conducting a search after consent was refused.

Section 2 of the bill mandates the bill will take effect immediately.

1. **ANALYSIS OF PRECONSIDERED T2019-4052**

Section 1 of the bill amends subdivision b of section 14-173 of the administrative code by requiring the police department to document the time, location and date of any attempt to obtain consent to search, and the apparent race/ethnicity, gender, and age of the person from whom consent was sought.

Section 2 of the bill amends subdivision e of section 14-173 of the administrative code of the city of New York by adding to the reporting requirement the total number of instances where an officer sought to obtain consent to search but did not obtain such consent, disaggregated by precinct and by race/ethnicity, age, and gender.

Section 3 of the bill mandates the bill take effect 120 days after it becomes law.

Int. No. 1522

By Council Members Gibson and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to requiring the civilian complaint review board to report information regarding complaints that officers failed to properly identify themselves or failed to obtain knowing and voluntary consent prior to conducting a search

Be it enacted by the Council as follows:

Section 1. The administrative code of the city of New York is amended by adding a new title 14-a to read as follows:

TITLE 14-A

CIVILIAN COMPLAINT REVIEW BOARD

CHAPTER 1

REPORTING

                     § 14-5000. Definitions. As used in this title, the following terms have the following meanings:

Board. The term “board” means the civilian complaint review board as defined in chapter 18-A of the city charter.

Law enforcement activity. The term “law enforcement activity” has the same meaning as in section 14-174.

Officer. The term “officer” has the same meaning as in section 14-174.

Semi-annual report. The term “semi-annual report” means the report required by paragraph 6 of subdivision (c) of section 440 of the charter.

                     § 14-5001. Required information on officer identification and consent searches. The semi-annual report shall include, but need not be limited to, the following information:

                     a. The number of complaints alleging a violation of section 14-174, in total and:

                      1. Disaggregated by the number of such complaints that were decided on the merits, the number of such complaints that were substantiated, the number of such complaints that were exonerated, the number of such complaints that were unfounded, and the number of such complaints for which body camera footage recorded the interaction; and

2. Disaggregated by the violation type and further disaggregated by the number of such complaints that were decided on the merits, the number of such complaints that were substantiated, the number of such complaints that were exonerated, the number of such complaints that were unfounded, the number of complaints that were unsubstantiated, the number of complaints for which the officer could not be identified, and the number of such complaints for which body camera footage recorded the interaction.

For the purposes of this subdivision, the violation type shall include: an officer’s failure to identify himself or herself to the person who is a subject of law enforcement activity; a failure to provide an explanation for the law enforcement activity; a failure to provide a business card or an alternative to a pre-printed business card pursuant to paragraphs (4) and (5) of subdivision 14-174 (b) to the subject of a law enforcement activity or in the case of a minor, to the parent, legal guardian, or responsible adult who is present with the minor subject.

                     b. The number of complaints alleging a violation of 14-173, in total and disaggregated by:

1. The number of such complaints that were decided on the merits, the number of such complaints that were substantiated, the number of such complaints that were exonerated, the number of such complaints the were unfounded, and the number of such complaints for which body camera footage recorded the request for consent and civilian response; and

2. The type of violation, and further disaggregated by the number of such complaints that were decided on the merits, the number of such complaints that were substantiated, the number of such complaints that were exonerated, the number of such complaints the were unfounded, the number of complaints that were unsubstantiated, the number of complaints for which the officer could not be identified, and the number of such complaints for which body camera footage recorded the request for consent and civilian response. For the purposes of this subdivision, the violation type shall include but not be limited to: a failure of the officer to articulate that the person who is the subject of the search is being asked to voluntarily, knowingly and intelligently consent to such search; a failure of the officer to explain that a search will not be conducted if the person refuses to consent, a failure of the officer to use appropriate language services in order to obtain knowing, voluntary and intelligent consent; the use of threats or promises in order to obtain consent to search; conducting a search without obtaining consent; conducting a search after consent was refused.

§ 2. This local law takes effect immediately.

D.A.

LS 10281

3.28.19

Preconsidered Int. No.

By Council Member Reynoso

A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York police department to report on instances in which an individual denied an officer consent to a search

Be it enacted by the Council as follows:

Section 1. Paragraph 2 of subdivision b of section 14-173 of the administrative code of the city of New York, as added by local law number 56 for the year 2018, is amended to read as follows:

2. Document the time, location, and date of any such attempt to obtain consent to search, and the apparent race/ethnicity, gender, and age of the person [who was the subject of such search] from whom consent was sought, and such  officer’s name, precinct, and shield number.

§ 2. Subdivision e of section 14-173 of the administrative code of the city of New York, as added by local law number 56 for the year 2018, is amended to read as follows:

e. Commencing within 30 days of the end of the quarter beginning on October 1, 2018, and within 30 days of the end of every quarter thereafter, the department shall post on its website a report of data from the preceding quarter collected pursuant to paragraph 2 of subdivision b, [specifically the] including, but not limited to:

1. The total number of consent searches conducted [during the preceding quarter] disaggregated by: [the:

1. Apparent] (a) The apparent race/ethnicity, gender, and age of the person searched; and

[2. Precinct] (b) The precinct where each search occurred, and further disaggregated by the apparent race/ethnicity, gender, and age of the person searched[.]; and

2. The total number of instances where an officer sought to obtain consent to search but did not obtain such consent disaggregated by:

(a) The apparent race/ethnicity, gender, and age of the person from whom such consent was sought; and

(b) The precinct where each such attempt to obtain consent to search occured, and further disaggregated by the apparent race/ethnicity, gender, and age of the person from whom such consent was sought.

§ 3. This local law takes effect 120 days after it becomes law.

AM

LS #9638

2/13/19

1. NYPD, 2011 4th Quarter Report on Stop, Question, and Frisk [↑](#footnote-ref-1)
2. *Floyd v. New York,* 959 F.Supp.2d 540 (SDNY 2013) available at <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=317> [↑](#footnote-ref-2)
3. *Floyd v. New York,* 959 F.Supp.2d 540 (SDNY 2013) available at <http://www.nysd.uscourts.gov/cases/show.php?db=special&id=317> [↑](#footnote-ref-3)
4. *Floyd v. New York*, 959 F.Supp.2d 668 (SDNY 2013) [↑](#footnote-ref-4)
5. Local Law 70 of 2013; Local Law 71 of 2013; Int. No. 182-A; Int. No. 541 [↑](#footnote-ref-5)
6. During Level 4 stops, an individual is placed under arrest and is able to ascertain the officer’s information from arrest paperwork. Officers are not required to proactively hand out a business card during level 1 stops, but are required to provide a card if an individual requests one. [↑](#footnote-ref-6)
7. Ad. Code §14-174 (a) [↑](#footnote-ref-7)
8. N.Y.C. Ad. Code §14-174 [↑](#footnote-ref-8)
9. N.Y.C. Ad. Code §14-174 (f) [↑](#footnote-ref-9)
10. Ninth Report of the Independent Monitor, January 11, 2019, p. 4, *available at:* <http://nypdmonitor.org/wp-content/uploads/2019/01/2019-01-11-Combined-Ninth-Report-4.pdf> [↑](#footnote-ref-10)
11. Local Law 56 of 2018 [↑](#footnote-ref-11)
12. N.Y.C. Ad. Code §14-173 [↑](#footnote-ref-12)
13. The department must develop a procedure if body worn cameras are not supplied by the department or are no longer used. [↑](#footnote-ref-13)
14. N.Y.C. Ad. Code §14-173 [↑](#footnote-ref-14)
15. N.Y.C. Ad. Code §14-173 [↑](#footnote-ref-15)
16. NYPD Patrol Guide Section 212-11, *available at* <https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf> [↑](#footnote-ref-16)
17. The law took effect on October 19, 2018. This data does not account for a full quarter. [↑](#footnote-ref-17)
18. [↑](#footnote-ref-18)