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Int. No. 649

By Council Members Perkins, Barron, Brewer, Comrie, Foster, Gerson, Jackson, James, Liu, Seabrook, Stewart, Koppell, Arroyo, Reed, Gonzalez, Palma, Martinez, Sanders Jr., Clarke, Monserrate, Vann, Dilan and Yassky

A Local Law to amend the administrative code of the city of New York, in relation to the arraignment process.

Be it enacted by the Council as follows:

Section One. Declaration of Legislative Findings and Intent. In 1991, the New York State Court of Appeals ruled that the police department and other city agencies violated New York law when they failed to present arrestees for judicial arraignment within 24 hours of arrest. The court concluded that failure to arraign arrestees within 24 hours of arrest caused “serious and lasting personal and economic harm to detainees,” and violated the Criminal Procedure Law. *See People ex rel. Michele Maxian on Behalf of Damon Roundtree, et al. v. Brown*, 77 N.Y.2d 422 (1991).

Yet the ruling by New York’s highest court is routinely violated. An analysis of arraignment reports

completed by the NYPD in October and November 2004 revealed that more than 16,000 arrestees in New York City were arraigned after twenty-four hours of arrest. In Bronx County, arrestees were far more likely than not to be arraigned after twenty-four hours, with sixty-seven percent arraigned more than twenty-four hours following arrest. Moreover, the problems associated with delayed arraignments in New York City are disproportionately experienced by people of color, since the vast majority of individuals arrested in New York City are African-American or Latino.

Bringing an arrestee before a judge for arraignment is more than a technicality of the law. The arraignment is the first occasion following an arrest that individuals are formally informed of the charges against them, the right to counsel and to seek bail. It is the first opportunity for individuals who have been fingerprinted, photographed and held for hours incommunicado to finally communicate with legal counsel, family and friends.

Notably, many of those detained in violation of the twenty-four hour mandate are charged with low level offenses, such as misdemeanors or violations, and face no jail time if convicted. While they wait unnecessarily in often overcrowded detention facilities, many are forced to miss work or school, or must urgently attempt to locate child care. Moreover, prolonged detention often creates strains on marital or familial relationships.

One of the most startling violations of the twenty-four hour mandate occurred during the Republican National Convention, when hundreds of demonstrators were arrested for minor violations and held well over the twenty-four hour limit, with some held more than sixty hours, despite months of logistical planning in preparation for the convention. Many felt that the prolonged detention of the demonstrators violated the demonstrators' right to engage in political expression.

This bill is necessary to ensure that the City of New York meets its legal obligation to promptly produce arrestees for arraignment within 24 hours of arrest. It also creates reasonable oversight over the arrest to arraignment process, and a private right of action for individuals arraigned more than twenty-four hours

following arrest.

§2. Chapter one of title ten of the administrative code of the city of New York is amended to add a new section 10-164, to read as follows:

§ 10-164. Arraignment Procedures.

a. New York City agencies and departments that have jurisdiction over the processing of arrests prior to arraignment shall, except in the event of an unforeseeable extraordinary circumstance, complete the processing of an arrest in an expeditious and timely manner so as to ensure that an arrestee is arraigned within twenty-four hours from the time of arrest. Notwithstanding the occurrence of an unforeseeable extraordinary circumstance, the pre-arraignment processing of an arrest shall be completed as soon as practicable. An unforeseeable extraordinary circumstance does not include a circumstance related to the government's failure to allocate resources necessary to process arrests in a timely manner.

b. The New York City Police Department and the New York City Department of Correction shall report on a quarterly basis to the City Council and Public Advocate the number of cases in which arraignment took place more than 24 hours following arrest. The New York City Police Department and the New York City Department of Correction shall include in its reporting, for each arrestee, the time the arrestee came under the custody or control of the respective department, the time the arrestee left the custody or control of the respective department, and any information that may explain why the arrestee was not arraigned within twenty-four hours of arrest. The New York Police Department and the New York City Department of Corrections shall comply in a timely manner to such a demand for information.

c. (i) In any instance in which a person is not arraigned within 24 hours or as otherwise required by this statute, he or she shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as a court may deem appropriate. In an action commenced pursuant to this section, the court shall award the prevailing party reasonable attorney's fees and expenses.

(ii) A cause of action brought pursuant to this section must be commenced within 3 years of the date of the incident giving rise to such a claim.

(iii) For purposes of this section, (a) “prevailing party” means a plaintiff or petitioner in a civil action against the City of New York or any of its agencies or departments who prevails in whole or in substantial part, should the plaintiff or petitioner and the City prevail upon separate issues; and (b) “fees and expenses” shall include the reasonable expenses of expert witnesses, the reasonable cost of conducting a study or analysis, reasonable attorneys fees, including fees for work performed by law students or paralegals under the supervision of an attorney, and like expenses.

§3. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§4. This local law shall take effect ninety days after it is enacted.