



Legislation Text

File #: Int 2220-2021, Version: A

Int. No. 2220-A

By Council Members Levin, Rosenthal, Kallos, Van Bramer, Koslowitz, Constantinides, Ampry-Samuel, Louis, Chin, Rivera, Barron and Gennaro

A Local Law to amend the administrative code of the city of New York, in relation to creating a right of security against unreasonable search and seizure, and against excessive force regardless of whether such force is used in connection with a search or seizure, that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

CHAPTER 8

THE RIGHT OF SECURITY AGAINST UNREASONABLE SEARCH AND SEIZURE AND AGAINST EXCESSIVE FORCE REGARDLESS OF WHETHER SUCH FORCE IS USED IN CONNECTION WITH A SEARCH OR SEIZURE

§ 8-801 Definitions.

§ 8-802 Right of security against unreasonable search and seizure and against excessive force regardless of whether such force is used in connection with a search or seizure.

§ 8-803 Civil action for deprivation of rights.

§ 8-804 Immunity not a defense.

§ 8-805 Relief.

§ 8-806 Statute of limitations.

§ 8-807 Construction.

§ 8-801 Definitions. For purposes of this chapter, the following terms have the following meanings:

Covered individual. The term “covered individual” means (i) an employee of the police department or (ii) a person who is appointed by the police commissioner as a special patrolman pursuant to subdivision c or e of section 14-106.

Person aggrieved. The term “person aggrieved” means a natural person who is allegedly subjected to, or

allegedly caused to be subjected to, the deprivation of a right created, granted or protected by section 8-802 by a covered individual even if the only injury allegedly suffered by such natural person is the deprivation of such right.

Prevailing plaintiff. The term “prevailing plaintiff” has the meaning ascribed to such term in subdivision g of section 8-502.

State. The term “state” means the state of New York.

§ 8-802 Right of security against unreasonable search and seizure and against excessive force regardless of whether such force is used in connection with a search or seizure. The right of natural persons to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and to be secure against the use of excessive force regardless of whether such force is used in connection with a search or seizure, shall not be violated; and no warrants shall be issued but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

§ 8-803 Civil action for deprivation of rights. a. A covered individual who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by section 8-802 is liable to the person aggrieved for legal or equitable relief or any other appropriate relief.

b. The employer of a covered individual who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by section 8-802 is liable, based upon the conduct of such covered individual, to the person aggrieved for legal or equitable relief or any other appropriate relief.

c. A person aggrieved may make a claim pursuant to subdivision a of this section in a civil action in any court of competent jurisdiction by filing a complaint setting forth facts pertaining to the deprivation of any right created, granted or protected by section 8-802 and requesting such relief as such person aggrieved considers

necessary to insure the full enjoyment of such right.

d. This section does not limit or abrogate any claim or cause of action a person aggrieved has under common law or pursuant to any other law or rule. Despite the availability of an alternative remedy under common law or pursuant to any other law or rule, the person aggrieved has and maintains a private right of action pursuant to this section. Exhaustion of any administrative remedies is not required for a person aggrieved to commence a civil action pursuant to this section. The remedies provided by this chapter are in addition to any other remedies that may be provided for under common law or pursuant to any other law or rule.

§ 8-804 Immunity not a defense. It is not a defense to liability pursuant to this chapter that a covered individual has qualified immunity or any other substantially equivalent immunity.

§ 8-805 Relief. a. In any civil action involving a claim made pursuant to section 8-803 against a covered individual or an employer thereof, a court shall, in addition to awarding any other relief, including injunctive or other equitable relief, as such court determines to be appropriate:

1. Award to a prevailing plaintiff on such claim (i) compensatory damages and, in such court's discretion, punitive damages or (ii) at the election of such plaintiff, damages of \$1,000;

2. Award to such plaintiff reasonable attorney's fees and court costs; and

3. Issue an order restraining such covered individual from engaging in further conduct in violation of such section.

b. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases when it chooses to factor the hourly rate into an attorney's fee award.

§ 8-806 Statute of limitations. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a person aggrieved must make a claim pursuant to section 8-803 in a civil action within 3 years after the alleged deprivation of a right created, granted or protected by section 8-802 occurred.

§ 8-807 Construction. Except as otherwise provided in this chapter and notwithstanding section 8-130,

(i) the right against unreasonable search and seizure, including excessive force used in connection with a search or seizure, created, granted or protected by section 8-802 shall be construed in the same manner as the right against unreasonable search and seizure, including excessive force used in connection with a search or seizure, created, granted or protected by the fourth amendment of the federal constitution, section 12 of article I of the state constitution and section 8 of the civil rights law and (ii) the right against excessive force, other than excessive force used in connection with a search or seizure, created, granted or protected by section 8-802 shall be construed in the same manner as the right against excessive force, other than excessive force used in connection with a search or seizure, created, granted or protected by the fourteenth amendment of the federal constitution and section 6 of article I of the state constitution.

§ 2. Section 7-114 of the administrative code of the city of New York, as added by local law number 166 for the year 2017, is amended to read as follows:

§ 7-114 Civil actions regarding the police department and covered individuals. a. For purposes of this section, the term “covered individual” has the meaning ascribed to such term in section 8-801.

b. No later than January 31, 2018 and no later than each July 31 and January 31 thereafter, the law department shall post on its website, and provide notice of such posting to the individual responsible for implementing the duties set forth in paragraph one of subdivision c of section 803 of the charter, the comptroller, the police department, the civilian complaint review board, and the commission to combat police corruption the following information regarding civil actions filed in local, state or federal court against the police department or [individual police officers] a covered individual, or both, resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, [or] false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8:

1. a list of civil actions filed against the police department or [individual police officers] a covered individual, or both, during the five-year period preceding each January 1 or July 1 immediately preceding each report;

2. for each such action: (i) the identities of the plaintiffs and defendants; (ii) the court in which the action was filed; [(ii)] (iii) the name of the law firm representing the plaintiff; [(iii)] (iv) the name of the law firm or agency representing each defendant; [(iv)] (v) the date the action was filed; and [(v)] (vi) whether the plaintiff alleged improper police conduct, including, but not limited to, claims involving use of force, assault and battery, malicious prosecution, [or] false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8; and

3. if an action has been resolved: (i) the date on which it was resolved; (ii) the manner in which it was resolved; and (iii) whether the resolution included a payment to the plaintiff by the city, or by a covered individual or an employer or other person paying on behalf of a covered individual, and, if so, the amount of such payment.

§ 3. This local law takes effect immediately, and applies to deprivations of rights created, granted or protected by this local law that occur on and after its effective date.

JJ
LS #15280
03/17/2021 3:08PM