

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2016**

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**No. 120**

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Introduced by Council Members Gibson, Cumbo, Crowley, Barron, Gentile, Johnson, Koslowitz, Mealy, Mendez, Richards, Cohen, Rosenthal, Menchaca, Van Bramer, Lancman, Lander, Levine, Levin, Kallos and the Public Advocate (Ms. James).

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to procedures and reporting for the Rikers Island nursery program**

*Be it enacted by the Council as follows:*

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-142 to read as follows:

*§ 9-142 Rikers Island nursery procedures and report.*

*a. Definitions. For the purposes of this section, the following terms shall have the following meanings:*

*Child. The term “child” means any person one year of age or younger whose mother is in the custody of the department.*

*Nursery. The term “nursery” means any department facility designed to accommodate newborn children of incarcerated mothers, pursuant to New York state correctional law section 611 or any successor statute.*

*Staff. The term “staff” means anyone, other than an inmate, working at a facility operated by the department.*

*Use of force A. The term “use of force A” means a use of force by staff on an inmate resulting in an injury to staff or inmate that requires medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including those uses of force resulting in one or more of the following treatments/injuries: (i) multiple abrasions and/or contusions; (ii) chipped or cracked tooth; (iii) loss of tooth; (iv) laceration; (v) puncture; (vi) fracture; (vii) loss of consciousness; including a concussion; (viii) suture; (ix) internal injuries, including but not limited to, ruptured spleen or perforated eardrum; and (x) admission to a hospital.*

*Use of force B. The term “use of force B” means a use of force by staff on an inmate resulting in an injury to staff or inmate that does not require hospitalization or medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including the following: (i) a use of force resulting in a superficial bruise, scrape, scratch, or minor swelling; and (ii) the forcible use of mechanical restraints in a confrontational situation that results in no or minor injury.*

*Use of force C. The term “use of force C” means a use of force by staff on an inmate resulting in no injury to staff or inmate, including incidents where use of oleoresin capsicum spray results in no injury, beyond irritation that can be addressed through decontamination.*

*b. Notice shall be given to all women admitted to any departmental facility that they may be eligible to be housed in the nursery with their child or children, if such child or children are one year of age or younger, and may be eligible to be housed in the nursery with their child after giving birth while in the custody of the department. Information about eligibility for the nursery shall be posted in the clinic. Such information and notice shall be provided in clear and simple language.*

*c. Children and their mothers shall be housed in the nursery unless the department determines that such housing would not be in the best interest of such child pursuant to section 611 of the correction law or any successor statute. The department shall maintain formal written procedures consistent with this policy and with the following provisions:*

*1. The warden of the facility in which the nursery is located may deny a child admission to the nursery only if a consideration of all relevant evidence indicates that such admission would not be in the best interest of the child.*

*2. Any inmate whose child is denied admission to the nursery shall be provided with a written determination specifying the facts and reasons underlying such determination. Such notice shall indicate that this determination may be appealed, and describe the appeals process in plain and simple language.*

*3. An inmate may appeal such determination. The appeal shall be decided by the commissioner or the chief of the department, in consultation with a person who has expertise in early childhood development. Any denial of an appeal shall include a specific statement of the reasons for denial. A copy of this determination on the appeal shall be provided to such inmate.*

*4. Inmates who are unable to read or understand the procedures in this subdivision shall be provided with necessary assistance.*

*d. The department shall post on the department website by the 30th day of January on a yearly basis a report containing information pertaining to the department's nursery for the prior calendar year. Such annual report shall include:*

*1. The total number of children admitted to the nursery, and the average daily population of children in the nursery;*

2. *The total number applications submitted by mothers to bring their children into the nursery;*

3. *The total number of applications that were approved;*

4. *The total number of applications that were denied. For any children for whom such application was denied, the placement of such child in the following categories: (i) with a family member or guardian, (ii) with New York city administration for child services or any similar governmental agency, or (iii) any other placement;*

5. *The mean and median length of stay for children in the nursery annually, and for each occasion where a child was discharged, whether the stay was terminated because (i) their mothers were discharged from the custody of the department, (ii) the child reached an age at which they were no longer eligible to be housed at the nursery, or (iii) any other reason. For any child whose nursery stay was terminated for a reason other than their mother's discharge from the custody of the department, the placement of such child in the following categories: (i) with a family member or guardian, (ii) with New York city administration for child services or any similar governmental agency, or (iii) any other placement;*

6. *The programming and services available to inmates and children in the nursery, including but not limited to the following categories: parenting, health and mental health, drug and/or alcohol addiction, vocational, educational, recreational, or other life skills; and*

7. *The following information by indicating the rate per 100 female inmates in the custody of the department, disaggregated by whether or not the incident took place in the nursery: (i) incidents of use of force A, (ii) incidents of use of force B, (iii) incidents of use of force C, and (iv) incidents of use of force C in which chemical agents are used.*

*e. The information in subdivision d of this section shall be compared to previous reporting periods, and shall be permanently accessible from the department's website.*

§2. This local law takes effect 90 days after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on September 28, 2016 and approved by the Mayor on October 18, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 120 of 2016, Council Int. No. 899-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel