S T A T E O F N E W Y O R K

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I N A S S E M B L Y

March 22, 2012

Introduced by M. of A. LINARES -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to persons not to be detained

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The correction law is amended by adding a new section 71-b to read as follows:

S 71-B. PERSONS NOT TO BE DETAINED. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CIVIL IMMIGRATION DETAINER" SHALL MEAN A DETAINER ISSUED PURSUANT TO 8 C.F.R. 287.7.

(B) "CONVICTED OF A CRIME" SHALL MEAN A FINAL JUDGMENT OF GUILT ENTERED ON A MISDEMEANOR OR FELONY CHARGE IN ANY OF THE CRIMINAL COURTS OF THE STATE, AS DEFINED IN SECTION 10.10 OF THE CRIMINAL PROCEDURE LAW, OR ANY OTHER COURT OF COMPETENT JURISDICTION IN THE UNITED STATES. PERSONS ADJUDICATED AS YOUTHFUL OFFENDERS, PURSUANT TO ARTICLE SEVEN HUNDRED TWENTY OF THE CRIMINAL PROCEDURE LAW OR A COMPARABLE PROVISION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE, OR JUVENILE DELINQUENTS, AS DEFINED BY SUBDIVISION ONE OF SECTION 301.2 OF THE FAMILY COURT ACT OR A COMPARABLE PROVISION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE, SHALL NOT BE CONSIDERED CONVICTED OF A CRIME.

(C) "FEDERAL IMMIGRATION AUTHORITIES" SHALL MEAN ANY OFFICER, EMPLOYEE OR PERSON OTHERWISE PAID BY OR ACTING AS AN AGENT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR ANY DIVISION THEREOF OR ANY OTHER OFFICER, EMPLOYEE OR PERSON OTHERWISE PAID BY OR ACTING AS AN AGENT OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY WHO IS CHARGED WITH ENFORCEMENT OF THE CIVIL PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT.

(D) "PENDING CRIMINAL CASE" SHALL MEAN A CASE IN ANY OF THE CRIMINAL COURTS OF THE STATE, AS DEFINED IN SECTION 10.10 OF THE CRIMINAL PROCEDURE LAW, OR ANY OTHER COURT OF COMPETENT JURISDICTION IN THE UNITED STATES, EXCLUDING THE FAMILY COURT OF THE STATE OR A COMPARABLE COURT IN ANOTHER JURISDICTION IN THE UNITED STATES, WHERE JUDGMENT HAS NOT BEEN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ENTERED AND WHERE A MISDEMEANOR OR FELONY CHARGE IS PENDING. ANY INDIVIDUAL WHOSE CASE IS DISPOSED OF WITH AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL PURSUANT TO SECTION 170.55 OR 170.56 OF THE CRIMINAL PROCEDURE LAW OR A COMPARABLE PROVISION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE SHALL NOT BE DEEMED TO BE A DEFENDANT IN A PENDING CRIMINAL CASE. A CASE IN WHICH THE HIGHEST CHARGE IS A VIOLATION OR A NON-CRIMINAL INFRACTION, INCLUDING A CASE IN WHICH AN INDIVIDUAL HAS BEEN SENTENCED TO CONDITIONAL DISCHARGE FOR COMMITTING A VIOLATION OR A NON-CRIMINAL INFRACTION PURSUANT TO SECTION 410.10 OF THE CRIMINAL PROCEDURE LAW OR A COMPARABLE PROVISION OF FEDERAL LAW OR THE LAW OF ANOTHER STATE, SHALL NOT BE DEEMED TO BE A PENDING CRIMINAL CASE.

(E) "TERRORIST SCREENING DATABASE" SHALL MEAN THE UNITED STATES TERRORIST WATCH LIST OR ANY SIMILAR OR SUCCESSOR LIST MAINTAINED BY THE UNITED STATES.

2. (A) THE DEPARTMENT SHALL NOT HONOR A CIVIL IMMIGRATION DETAINER BY:

(I) HOLDING AN INDIVIDUAL BEYOND THE TIME WHEN SUCH INDIVIDUAL WOULD OTHERWISE BE RELEASED FROM THE DEPARTMENT'S CUSTODY, EXCEPT FOR SUCH REASONABLE TIME AS IS NECESSARY TO CONDUCT THE SEARCH SPECIFIED IN PARAGRAPH (B) OF THIS SUBDIVISION, OR

(II) NOTIFYING FEDERAL IMMIGRATION AUTHORITIES OF SUCH INDIVIDUAL'S RELEASE.

(B) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY WHEN:

(I) A SEARCH, CONDUCTED AT OR ABOUT THE TIME WHEN SUCH INDIVIDUAL WOULD OTHERWISE BE RELEASED FROM THE DEPARTMENT'S CUSTODY, OF STATE AND FEDERAL DATABASES, OR ANY SIMILAR OR SUCCESSOR DATABASES, ACCESSED THROUGH THE DIVISION OF CRIMINAL JUSTICE SERVICES E-JUSTICENY COMPUTER APPLICATION, OR ANY SIMILAR OR SUCCESSOR COMPUTER APPLICATION MAINTAINED BY THE STATE, INDICATES THAT SUCH INDIVIDUAL:

(A) HAS BEEN CONVICTED OF A CRIME;

(B) IS A DEFENDANT IN A PENDING CRIMINAL CASE;

(C) HAS AN OUTSTANDING CRIMINAL WARRANT IN THE STATE OR ANOTHER JURISDICTION IN THE UNITED STATES;

(D) IS IDENTIFIED AS A KNOWN GANG MEMBER IN THE DATABASE OF THE NATIONAL CRIME INFORMATION CENTER OR ANY SIMILAR OR SUCCESSOR DATABASE MAINTAINED BY THE UNITED STATES; OR

(E) IS IDENTIFIED AS A POSSIBLE MATCH IN THE TERRORIST SCREENING DATABASE.

(II) THE SEARCH CONDUCTED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH INDICATES, OR THE DEPARTMENT HAS BEEN INFORMED BY FEDERAL IMMIGRATION AUTHORITIES, THAT SUCH INDIVIDUAL:

(A) HAS AN OUTSTANDING WARRANT OF REMOVAL ISSUED PURSUANT TO 8 C.F.R. 241.2; OR

(B) IS OR HAS PREVIOUSLY BEEN SUBJECT TO A FINAL ORDER OF REMOVAL PURSUANT TO 8 C.F.R. 1241.1.

(C) NOTHING IN THIS SECTION SHALL AFFECT THE OBLIGATION OF THE DEPARTMENT TO MAINTAIN THE CONFIDENTIALITY OF ANY INFORMATION OBTAINED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CONFER ANY AUTHORITY ON ANY ENTITY TO HOLD INDIVIDUALS ON CIVIL IMMIGRATION DETAINERS BEYOND THE AUTHORITY, IF ANY, THAT EXISTED PRIOR TO THE ENACTMENT OF THIS SECTION.

4. NO LATER THAN THE THIRTIETH OF SEPTEMBER, TWO THOUSAND THE THIRTEEN AND NO LATER THAN THIRTIETH OF SEPTEMBER OF EACH YEAR THEREAFTER, THE DEPARTMENT SHALL POST A REPORT ON THE DEPARTMENT WEBSITE THAT INCLUDES THE FOLLOWING INFORMATION FOR THE PRECEDING TWELVE MONTH PERIOD:

(A) THE NUMBER OF INDIVIDUALS HELD PURSUANT TO CIVIL IMMIGRATION DETAINERS BEYOND THE TIME WHEN SUCH INDIVIDUAL WOULD OTHERWISE BE RELEASED FROM THE DEPARTMENT'S CUSTODY;

(B) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS;

(C) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD AT LEAST ONE FELONY CONVICTION;

(D) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD AT LEAST ONE MISDEMEANOR CONVICTION BUT NO FELONY CONVICTIONS;

(E) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD NO MISDEMEANOR OR FELONY CONVICTIONS;

(F) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD NO MISDEMEANOR OR FELONY CONVICTIONS AND WERE IDENTIFIED AS KNOWN GANG MEMBERS IN THE DATABASE OF THE NATIONAL CRIME INFORMATION CENTER OR A SUCCESSOR DATABASE MAINTAINED BY THE UNITED STATES;

(G) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD NO MISDEMEANOR OR FELONY CONVICTIONS AND WERE IDENTIFIED AS POSSIBLE MATCHES IN THE TERRORIST SCREENING DATABASE;

(H) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD NO MISDEMEANOR OR FELONY CONVICTIONS AND WERE IDENTIFIED AS BOTH POSSIBLE MATCHES IN THE TERRORIST SCREENING DATABASE AND KNOWN GANG MEMBERS IN THE DATABASE OF THE NATIONAL CRIME INFORMATION CENTER OR A SUCCESSOR DATABASE MAINTAINED BY THE UNITED STATES;

(I) THE NUMBER OF INDIVIDUALS TRANSFERRED TO THE CUSTODY OF FEDERAL IMMIGRATION AUTHORITIES PURSUANT TO CIVIL IMMIGRATION DETAINERS WHO HAD NO MISDEMEANOR OR FELONY CONVICTIONS AND WERE DEFENDANTS IN A PENDING CRIMINAL CASE;

(J) THE AMOUNT OF STATE CRIMINAL ALIEN ASSISTANCE FUNDING REQUESTED AND RECEIVED FROM THE FEDERAL GOVERNMENT; AND

(K) THE NUMBER OF INDIVIDUALS FOR WHOM CIVIL IMMIGRATION DETAINERS WERE NOT HONORED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.