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

2015

2015-2016 Regular Sessions

I N S E N A T E

January 21, 2015

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the "New York immigrant family unity pilot program"; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Short title. This act shall be known and may be cited as the "New York immigrant family unity pilot program".

S 2. The executive law is amended by adding a new section 94-c to read as follows:

S 94-C. PROVISION OF COUNSEL TO DETAINED INDIGENT INDIVIDUALS IN REMOVAL PROCEEDINGS PILOT PROGRAM. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

(A) "RESIDENT OF THE STATE OF NEW YORK" SHALL MEAN A PERSON WHO LIVES IN NEW YORK STATE WITH THE INTENT TO MAKE NEW YORK STATE A FIXED AND PERMANENT PLACE TO LIVE. ANYONE CURRENTLY RESIDING IN THE STATE OF NEW YORK WHO HAS LIVED IN THE STATE FOR AT LEAST NINETY DAYS IS PRESUMED TO BE A RESIDENT OF NEW YORK STATE.

(B) "FINANCIALLY UNABLE TO OBTAIN COUNSEL" SHALL MEAN THAT AN INDIVIDUAL'S HOUSEHOLD INCOME DOES NOT EXCEED TWO HUNDRED PERCENT OF THE FEDERAL POVERTY GUIDELINES SET FORTH IN 42 U.S.C. S 9902(2).

(C) "IMMIGRATION COURT" SHALL MEAN THE COURTS UNDER THE JURISDICTION OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW UNDER THE DEPARTMENT OF JUSTICE.

(D) "LEGAL SERVICE PROVIDERS" SHALL MEAN PRIVATE LAW FIRMS, NONPROFIT LEGAL SERVICE ORGANIZATIONS, OR ANY COMBINATION THEREOF.

2. RIGHT TO COUNSEL IN IMMIGRATION COURT; ELIGIBILITY. (A) THE RIGHT TO STATE-APPOINTED COUNSEL SHALL BE EXTENDED TO ANY RESIDENT OF THE STATE OF NEW YORK WHO IS DETAINED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IS FINANCIALLY UNABLE TO RETAIN COUNSEL, AND IS BEING

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

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HELD FOR REMOVAL PROCEEDINGS IN THE STATE OF NEW YORK OR WITHIN TWENTY MILES OF THE STATE OF NEW YORK.

(B) SUCH RIGHT TO COUNSEL SHALL ATTACH FROM THE COMMENCEMENT OF THE PROCEEDING; IF HOWEVER AN INDIVIDUAL IS NOT INITIALLY ELIGIBLE FOR SUCH RIGHT TO COUNSEL, SUCH RIGHT SHALL ATTACH AT THE POINT THEREAFTER WHEN SUCH INDIVIDUAL BECOMES ELIGIBLE FOR STATE APPOINTED COUNSEL.

(C) SUCH RIGHT TO COUNSEL SHALL REQUIRE REPRESENTATION OF SUCH ELIGIBLE INDIVIDUAL IN COURT, REGARDLESS OF THE LOCATION OF THE INDIVIDUAL THROUGHOUT THE PROCEEDINGS.

3. CONTRACTS WITH LEGAL SERVICE PROVIDERS. (A) THE DEPARTMENT OF STATE, IN CONSULTATION WITH THE OFFICE OF INDIGENT LEGAL SERVICES, SHALL CONTRACT WITH LEGAL SERVICE PROVIDERS TO GUARANTEE THE PROVISION OF THE LEGAL SERVICES REQUIRED UNDER SUBDIVISION TWO OF THIS SECTION AND SHALL OVERSEE AND TAKE ALL STEPS NECESSARY TO ENSURE THE EFFECTIVE ADMINISTRATION OF THE PROVISION OF SERVICES REQUIRED UNDER THIS SECTION.

(B) SUCH CONTRACTS SHALL PROVIDE FOR THE REPRESENTATION OF QUALIFYING INDIVIDUALS AS DEFINED IN SUBDIVISION TWO OF THIS SECTION, AT NO CHARGE, IN THE FOLLOWING PROCEEDINGS:

(I) THE FIRST OR ANY SUBSEQUENT APPEARANCE IN AN INSTANT REMOVAL PROCEEDING BEFORE THE IMMIGRATION COURT;

(II) A PROCEEDING SEEKING RELEASE FROM UNITED STATES DEPARTMENT OF HOMELAND SECURITY CUSTODY; AND

(III) IN ANY APPEAL TO THE BOARD OF IMMIGRATION APPEALS.

(C) SUCH CONTRACTS SHALL ALSO PROVIDE REIMBURSEMENT FOR BASIC LEGAL SUPPORT SERVICES INCLUDING, BUT NOT LIMITED TO, ACCESS TO NECESSARY EXPERTS, TRANSLATION AND INTERPRETATION SERVICES, SOCIAL WORK AND MENTAL HEALTH ASSESSMENT SERVICES, AND INVESTIGATIVE SERVICES. WHERE PRACTICABLE, SUCH CONTRACTS SHALL ALSO PROVIDE TRAVEL REIMBURSEMENT TO THE LEGAL PROVIDER IF HE OR SHE IS REQUIRED TO TRAVEL TO MEET WITH CLIENTS.

4. REPORT ON FINDINGS OF THE PILOT PROGRAM. THE DEPARTMENT OF STATE SHALL PREPARE A REPORT AT THE CONCLUSION OF THE PILOT PROGRAM AND PROVIDE SUCH REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY, NO LATER THAN ONE YEAR AFTER THE CONCLUSION OF THE PROGRAM. THE REPORT SHALL INCLUDE, AT MINIMUM, AN ASSESSMENT OF THE IMPACT OF THIS SECTION ON:

(A) THE INDIVIDUALS GRANTED THE RIGHT TO STATE-APPOINTED COUNSEL, INCLUDING BUT NOT LIMITED TO THE BENEFITS RECEIVED BY THE INDIVIDUAL AND HIS OR HER IMMEDIATE FAMILY AS A RESULT OF RECEIVING STATE-APPOINTED COUNSEL;

(B) THE STATE BUDGET AND BUDGETS OF THE POLITICAL SUBDIVISIONS OF THE STATE, INCLUDING CONSIDERATION OF BOTH THE COSTS OF ADMINISTERING THE PROGRAM AND THE COST SAVINGS REALIZED BY THE STATE, FROM THE PREVENTION OF UNNECESSARY DEPORTATIONS;

(C) THE STATE ECONOMY, INCLUDING SPECIFICALLY THE IMPACT ON NEW YORK STATE EMPLOYERS AND BUSINESSES; AND

(D) THE FEDERAL GOVERNMENT, INCLUDING SPECIFICALLY THE ADMINISTRATION OF THE NATION'S IMMIGRATION COURTS AND ENFORCEMENT SYSTEMS.

S 3. This act shall take effect April 1, 2016 and shall expire two years after such effective date when upon such date the provisions of this act shall be deemed repealed.