

# STATE OF NEW YORK

11013--A

## IN ASSEMBLY

May 30, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Solages, Crespo, Kim, Niou, Barron, Davila, De La Rosa, Dickens, Epstein, Espinal, Fernandez, Hevesi, Hyndman, Jaffee, Jean-Pierre, Lentol, Mosley, O'Donnell, Pichardo, Pretlow, Ramos, Rozic, Seawright, Weprin, Williams, Wright, Lavine, Gottfried) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law and the judiciary law, in relation to protecting certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "protect  
2 our courts act".

3 § 2. The civil rights law is amended by adding a new section 28 to  
4 read as follows:

5 § 28. Civil arrest; certain locations. 1. A person duly and in good  
6 faith attending a court proceeding in which such person is a party or  
7 potential witness, or a family or household member is a party or poten-  
8 tial witness, is privileged from civil arrest while going to, remaining  
9 at, and returning from, the place of such court proceeding, unless such  
10 civil arrest is supported by a judicial warrant or judicial order  
11 authorizing such civil arrest.

12 2. It is a contempt of the court and false imprisonment for any person  
13 to willfully violate subdivision one of this section, or an order of the  
14 court issued pursuant to section four-a of the judiciary law, by execut-  
15 ing an arrest prohibited by subdivision one of this section or section  
16 four-a of the judiciary law, or willfully assisting or willfully facili-  
17 tating an arrest prohibited by subdivision one of this section or  
18 section four-a of the judiciary law; provided, however, that nothing in  
19 this subdivision shall affect any right or defense of any person, police  
20 officer, peace officer or public officer pursuant to article thirty-five  
21 of the penal law.

22 3. Regardless of whether a proceeding for contempt of the court pursu-  
23 ant to subdivision two of this section has been initiated:

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

LBD15571-05-8

1 (a) a person described in subdivision one of this section may bring a  
 2 civil action for appropriate equitable and declaratory relief if such  
 3 person has reasonable cause to believe a violation of subdivision one of  
 4 this section, as described in subdivision two of this section, or a  
 5 violation of section four-a of the judiciary law, has occurred or may  
 6 occur; and

7 (b) the attorney general may bring a civil action in the name of the  
 8 people of the state of New York to obtain appropriate equitable and  
 9 declaratory relief if the attorney general has reasonable cause to  
 10 believe that a violation of subdivision one of this section, as  
 11 described in subdivision two of this section, or a violation of section  
 12 four-a of the judiciary law, has occurred or may occur.

13 4. In any successful action pursuant to subdivision three of this  
 14 section, a plaintiff or petitioner may recover costs and reasonable  
 15 attorney's fees.

16 5. Nothing in this section shall be construed to narrow, or in any way  
 17 lessen, any common law or other right or privilege of a person privi-  
 18 leged from arrest pursuant to this article or otherwise.

19 6. As used in this section:

20 (a) "civil arrest" shall mean an arrest that is not:

21 (i) for the sole or primary purpose of preparing the person subject to  
 22 such arrest for criminal prosecution, for an alleged violation of the  
 23 criminal law of:

24 (A) this state, or another state, for which a sentence of a term of  
 25 imprisonment is authorized by law; or

26 (B) the United States, for which a sentence of a term of imprisonment  
 27 is authorized by law, and for which federal law requires an initial  
 28 appearance before a federal judge, federal magistrate or other judicial  
 29 officer, pursuant to the federal rules of criminal procedure that govern  
 30 initial appearances; or

31 (ii) for contempt of the court in which the court proceeding is taking  
 32 place or will be taking place;

33 (b) "court proceeding" shall mean any appearance in a court of this  
 34 state before a judge or justice or judicial magistrate of this state  
 35 ordered or scheduled by such judge or justice or judicial magistrate, or  
 36 the filing of papers designed to initiate such an appearance before a  
 37 judge or justice or judicial magistrate of this state;

38 (c) "family or household member" shall have the same meaning as in  
 39 subdivision two of section four hundred fifty-nine-a of the social  
 40 services law; and

41 (d) "judicial warrant or judicial order authorizing such civil arrest"  
 42 means an arrest warrant or other judicial order, issued by a magistrate  
 43 sitting in the judicial branch of a local or state government or of the  
 44 federal government, authorizing a civil arrest and issued by the court  
 45 in which proceedings following such arrest will be heard and determined.

46 § 3. The judiciary law is amended by adding a new section 4-a to read  
 47 as follows:

48 § 4-a. Certain powers of the courts regarding civil arrests. In order  
 49 to maintain access to the court and open judicial proceedings for all  
 50 persons in their individual capacity and to prevent interference with  
 51 the needs of judicial administration, a court has the power to issue  
 52 appropriate judicial orders to protect the privilege from civil arrest,  
 53 in accordance with article three of the civil rights law.

54 § 4. Subdivision 2 of section 212 of the judiciary law is amended by  
 55 adding a new paragraph (w) to read as follows:

1 (w) (i) In order to maintain access to the court and open judicial  
2 proceedings for all persons in their individual capacity and to prevent  
3 interference with the needs of judicial administration, consistent with  
4 section twenty-eight of the civil rights law and section four-a of this  
5 chapter, direct that court personnel responsible for all courthouses and  
6 the places of all court proceedings in the state shall not allow access  
7 to such courthouses and places of court proceedings to non-local law  
8 enforcement personnel seeking to enter such locations with respect to  
9 violation or violations of federal immigration law unless presented with  
10 a valid judicial warrant or judicial order, and designated counsel of  
11 the unified court system has individually reviewed and confirmed in  
12 writing the authenticity of such judicial warrant or judicial order.  
13 Non-local law enforcement personnel seeking to enter such a location  
14 with respect to violation or violations of federal immigration law shall  
15 identify themselves and such purpose, and present such judicial warrant  
16 or judicial order to such responsible court personnel when seeking such  
17 access. The chief administrator shall promulgate rules consistent with  
18 this subdivision designed to implement the provisions of this paragraph.

19 (ii) Such rules shall also require that a copy of each judicial  
20 warrant and judicial order reviewed by designated counsel of the  
21 unified court system under this paragraph be sent to and maintained in a  
22 central repository by the chief administrator, who shall on an annual  
23 basis compile statistics disaggregated by county and prepare a report  
24 of such statistics, and also identify in such report, for each such  
25 judicial warrant and judicial order, the date such judicial warrant or  
26 judicial order was signed, the judge and court which issued such judi-  
27 cial warrant or judicial order and the location of such court as shown  
28 by such document, the date such judicial warrant or judicial order was  
29 presented to counsel for the unified court system, a description of the  
30 type of judicial warrant or judicial order and, to the extent known to  
31 court personnel, whether or not an arrest occurred and the date and  
32 location of such arrest. Such report, which shall not include the names  
33 of individuals involved, shall be published on the website of the  
34 unified court system and copies of such report shall be sent to the  
35 governor, the speaker of the assembly and the temporary president of the  
36 senate.

37 (iii) For purposes of this paragraph, "non-local law enforcement  
38 personnel" shall mean a person or persons employed or retained by a law  
39 enforcement agency: (A) of a jurisdiction other than the state of New  
40 York or a local government in the state of New York; or (B) of the state  
41 of New York or a local government in the state of New York, where such  
42 law enforcement agency or employee or agent thereof has entered into an  
43 agreement with a federal law enforcement agency, including but not  
44 limited to pursuant to 8 U.S.C. 1373, authorizing it or such person to  
45 enforce or assist in the enforcement of federal immigration law.

46 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-  
47 sion, section or part of this act shall be adjudged by any court of  
48 competent jurisdiction to be invalid, such judgment shall not affect,  
49 impair, or invalidate the remainder thereof, but shall be confined in  
50 its operation to the clause, sentence, paragraph, subdivision, section  
51 or part thereof directly involved in the controversy in which such judg-  
52 ment shall have been rendered. It is hereby declared to be the intent of  
53 the legislature that this act would have been enacted even if such  
54 invalid provisions had not been included herein.

55 § 6. This act shall take effect immediately.