

STATE OF NEW YORK

3049--B

2017-2018 Regular Sessions

IN ASSEMBLY

January 25, 2017

Introduced by M. of A. MOYA, HEASTIE, CRESPO, SOLAGES, LENTOL, FARRELL, RIVERA, ARROYO, BARRON, BICHOTTE, BLAKE, COOK, CAHILL, JEAN-PIERRE, JOYNER, DE LA ROSA, DICKENS, HARRIS, HOOPER, HYNDMAN, MOSLEY, ORTIZ, PEOPLES-STOKES, PERRY, NIOU, PICHARDO, OTIS, PRETLOW, RICHARDSON, RODRIGUEZ, ROZIC, RAMOS, AUBRY, KIM, DAVILA, SEPULVEDA, TITUS, GANTT, O'DONNELL, LIFTON, ABINANTI, DINOWITZ, GLICK, KAVANAGH, NOLAN, QUART, SIMON, SIMOTAS, CARROLL, WEPRIN -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the judiciary law, in relation to access to services, law enforcement and counsel in certain immigration related matters; and to amend the judiciary law, in relation to compensation of legal counsel for certain matters

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

1 Section 1. The executive law is amended by adding a new article 15-AA
2 to read as follows:

ARTICLE 15-AA

ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED MATTERS

Section 319. Definitions.

7 319-a. Access to services, assistance and eligible benefits.

8 319-b. Federal agencies to investigate and enforce federal
9 immigration laws.

10 319-c. Confidentiality of information.

11 319-d. Custody of certain persons: bail and related pre-trial
12 issues.

13 319-e. Civil immigration detainers.

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

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319-f. Limitation on use of certain facilities.

319-g. Legal representation.

319-h. Effect on other laws.

§ 319. Definitions. For purposes of this article, the following terms and phrases shall be defined as follows:

1. "Agency" shall mean any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof.

2. "Agent" shall mean any officer, official, employee or volunteer working for, employed by or providing assistance to an agency.

3. "Civil immigration detainer" shall mean an administrative request issued pursuant to 8 C.F.R. § 287.7 or any similar request issued by an agency or agent of the United States for the detention of a person suspected of violating the immigration law of the United States.

4. "Family or household member" shall mean a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law.

5. "Federal immigration authority" shall mean any officer, employee or person otherwise paid by or acting as an agent of the 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 or any other federal entity who is charged with enforcement of the provisions of any federal immigration law.

6. "Federal law" shall mean a provision of the Constitution of the United States, or a statute or similar provision approved by the Congress of the United States that has been enacted and taken effect.

7. "Immigration status" or "immigration status information" shall mean immigration status, lawful or unlawful, of an individual under the laws and regulations of the United States of America.

8. "Judicial warrant" shall mean a warrant based on probable cause and issued by a judge serving pursuant to article three of the United States constitution or a federal magistrate judge serving by appointment pursuant to 28 U.S.C. § 631, that authorizes a federal immigration authority to take into custody a person who is the subject of such warrant.

9. "Law enforcement agency" shall mean any agency that is empowered by law to conduct an investigation or make an arrest for a crime or offense, or any agency that is authorized by law to prosecute or participate in the prosecution of a crime or offense, or any agency authorized by law to jail, detain or imprison a person under color of law, or any agency employing a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or peace officer, as defined in subdivision thirty-three of section 1.20 of the criminal procedure law.

10. "Terrorist screening database" shall mean the United States terrorist watch list database lawfully maintained by the terrorist screening center of the government of the United States.

§ 319-a. Access to services, assistance and eligible benefits. 1. Except where explicitly required by state or federal law for the purpose of verifying eligibility, continued eligibility, or upon recertification, no state or local agency, or agent thereof, may make any inquiry or record any information concerning the immigration status or place of birth of a person who is seeking public assistance and care, as such phrase is defined in subdivision eighteen of section two of the

1 social services law, or seeking any other benefit, assistance or service
2 for himself, herself, or on behalf of a family or household member or
3 any other potential beneficiary. Provided, further, that such informa-
4 tion shall not be used or disclosed to any state or federal agency for
5 any purpose other than verifying eligibility, continued eligibility, or
6 upon recertification.

7 2. Notwithstanding the provisions of subdivision one of this section,
8 limited inquiry of such information concerning the relevant person may
9 be made when such information is requested for the benefit of the person
10 by the office for new Americans established pursuant to section ninety-
11 four-b of this chapter or any other similar agency that is assisting
12 such person in matters related to such person's immigration status,
13 provided that the status of such person shall not be disclosed for any
14 purpose.

15 3. In addition to any other right to the assistance of interpretation
16 or translation services, any foreign-born person, or person not profi-
17 cient in the English language, to whom inquiry is made pursuant to this
18 section shall be entitled to the assistance of a neutral and qualified
19 interpreter or translator, as the case may be, with respect to such
20 inquiry, provided at no cost or expense to such person.

21 § 319-b. Federal agencies to investigate and enforce federal immi-
22 gration laws. 1. No state or local law enforcement agency, or agent
23 thereof, shall stop, question, interrogate, investigate or arrest a
24 person for any of the following:

25 (a) suspected United States immigration or citizenship status
26 violation;

27 (b) suspected violation of the United States immigration law or
28 authorized regulations; or

29 (c) a civil immigration detainer.

30 2. No state or local law enforcement agency, nor any agent thereof,
31 shall make any inquiry or record any information concerning the immi-
32 gration status or place of birth of a person who: (a) contacts,
33 approaches or asks for or is in need of assistance of a law enforcement
34 agency or (b) is stopped, questioned, interrogated, investigated or
35 arrested; except where such immigration status or place of birth infor-
36 mation is an element of a criminal offense in a specific, ongoing law
37 enforcement investigation engaged in by such state or local law enforce-
38 ment agency, or agent thereof, or where such inquiry or recording of
39 such information is otherwise authorized by this article.

40 3. No state or local law enforcement agency, or agent thereof, shall
41 perform the function of or be cross-designated as a federal immigration
42 officer or otherwise engage or significantly assist in the enforcement
43 of federal immigration law, pursuant to 8 U.S.C. § 1357 (g) or any other
44 federal law, regulation or policy. Nothing in this subdivision shall
45 prevent detention of a person in accordance with and to the extent
46 permitted by section three hundred nineteen-e of this article.

47 4. In addition to any other right to the assistance of interpretation
48 or translation services, any foreign-born person, or person not profi-
49 cient in the English language, to whom inquiry is made pursuant to
50 subdivision one or two of this section shall be entitled to the assist-
51 ance of a neutral and qualified interpreter or translator, as the case
52 may be, with respect to such inquiry, provided at no cost or expense to
53 such person.

54 § 319-c. Confidentiality of information. Unless disclosure is required
55 by a lawful court order, no state or local agency, or agent thereof, or
56 state or local law enforcement agency, or agent thereof, shall provide

1 to a federal immigration authority any information collected or obtained
2 with respect to a person in accordance with this article or otherwise,
3 including but not limited to home, work or school address, except that:

4 1. providing immigration status information shall not be prohibited if
5 requested by such federal immigration authority and required to be
6 provided to it in accordance with 8 U.S.C. § 1373 or another federal
7 law;

8 2. the division of criminal justice services or a qualified agency, as
9 defined in subdivision nine of section eight hundred thirty-five of this
10 chapter, may provide criminal history information, as defined in para-
11 graph (c) of subdivision one of section eight hundred forty-five-b of
12 this chapter, when lawfully requested about a specific person and such
13 disclosure is permitted by state law; and

14 3. a state or local agency, or agent thereof, or state or local law
15 enforcement agency, or agent thereof, may provide such information,
16 other than the information described in subdivision one of this section,
17 concerning a person, including but not limited to status as a victim of
18 or witness to suspected criminal activity, home address and/or work
19 address, only with informed written consent of the person and, if
20 represented by counsel, written authorization by such attorney.

21 § 319-d. Custody of certain persons: bail and related pre-trial
22 issues. 1. Except as provided in section three hundred nineteen-e of
23 this article, no state or local law enforcement agency, or agent there-
24 of, or court shall delay or deny release of a person on recognizance or
25 bail, pursuant to article five hundred thirty of the criminal procedure
26 law or otherwise, on the basis of the person's immigration status, a
27 civil immigration detainer, or a federal immigration authority's request
28 for notification about, transfer of, detention of, or interview or
29 interrogation of such person.

30 2. Upon receipt from a federal immigration authority of a civil immi-
31 gration detainer, or a request for transfer, notification, interview,
32 interrogation or other request, a state or local law enforcement agency,
33 or agent thereof, shall promptly notify the person who is the subject of
34 such detainer or request and such person's counsel, provide a copy of
35 such detainer or request, as the case may be, to such person and coun-
36 sel, inform such person of the right to counsel pursuant to the
37 provisions of section three hundred nineteen-g of this article, and
38 inform such person and counsel, reasonably in advance of responding to
39 the federal immigration authority, as to whether or not such agency
40 intends to comply with such detainer or request.

41 3. A person in the custody of a state or local law enforcement agency,
42 or agent thereof, shall be subject to booking, processing, right to
43 counsel, release and transfer procedures, policies and practices of that
44 agency that are at least as protective of individual rights as other
45 persons in such agency's custody, regardless of the person's actual or
46 suspected immigration status.

47 § 319-e. Civil immigration detainers. 1. A state or local law enforce-
48 ment agency, or agent thereof, lawfully holding a person in its custody,
49 may thereafter detain such person solely on the basis of a civil immi-
50 gration detainer, for a single period not exceeding forty-eight hours
51 excluding weekends and holidays, beyond the time when such person would
52 otherwise have been released from such agency's custody, only if:

53 (a) an authorized federal immigration agency presents such state or
54 local law enforcement agency with a judicial warrant for the detention
55 of the person who is the subject of such civil immigration detainer at
56 the time such civil immigration detainer is presented; or

1 (b) notice has been received from a court or any other governmental
2 entity, documenting that the person illegally reentered the United
3 States after a previous removal or return as defined in 8 U.S.C. §
4 1326, and the person stands convicted of a violent felony offense as
5 defined in subdivision one of section 70.02 of the penal law, or a class
6 A felony offense defined in the penal law, or an offense in any other
7 jurisdiction that has the same essential elements of any such violent
8 felony offense or class A felony offense; or

9 (c) such person is identified by such state or local law enforcement
10 agency as a likely match with a person listed in the terrorist screening
11 database.

12 2. Except to the extent that disclosure is required by federal law, no
13 state or local law enforcement agency, or agent thereof, shall provide
14 to a federal immigration authority, or another agency, entity or person
15 on behalf of a federal immigration authority, any information obtained
16 concerning a person who is in or formerly was in the custody of such
17 state or local law enforcement agency, or agent thereof, including but
18 not limited to the person's release date, court appearance date or
19 dates, home, work or school address.

20 3. Nothing in this section shall be construed to confer any authority
21 on an entity to detain a person based on a civil immigration detainer
22 beyond the authority, if any, to do so that existed prior to the enact-
23 ment of this section.

24 § 319-f. Limitation on use of certain facilities. 1. No state or local
25 law enforcement agency, or agent thereof, shall provide a federal immi-
26 gration agency, or agent thereof, with access to an individual in such
27 law enforcement agency's custody or control.

28 2. Notwithstanding the provisions of subdivision one of this section,
29 a person in the custody of a state or local law enforcement agency may
30 request to be interviewed by a federal law enforcement agency or an
31 agent thereof only with knowing and voluntary written consent of the
32 individual and, if represented by counsel, written authorization by such
33 counsel, provided that if such individual is not represented and is
34 entitled to counsel assigned pursuant to section three hundred nine-
35 teen-g of this article or article eighteen-B of the county law, he or
36 she shall be notified of such right and provided a reasonable opportu-
37 nity to obtain such counsel before any such interview.

38 3. In addition to any other right to the assistance of interpretation
39 or translation services, any foreign-born person, or person not profi-
40 cient in the English language, to whom inquiry is made pursuant to this
41 section shall be entitled to the assistance of a neutral and qualified
42 interpreter or translator, as the case may be, with respect to such
43 inquiry, provided at no cost or expense to such person.

44 4. Except as provided in subdivision two of this section, federal
45 immigration authorities shall not be permitted to use or maintain, for
46 the purpose of interviewing any person or witness or investigating or
47 adjudicating any alleged violation of federal immigration law, any
48 office or quarters in any building or facility or any land owned, leased
49 or operated by a state or local law enforcement agency; provided, howev-
50 er that the federal Executive Office for Immigration Review, pursuant to
51 an otherwise lawful agreement with the state department of corrections
52 and community supervision, may make use of offices in one or more build-
53 ings or facilities operated as state correctional facilities in this
54 state for the purpose of conducting adjudicatory hearings involving
55 alleged violation of federal immigration law.

1 § 319-g. Legal representation. 1. A person unable to afford counsel
2 against whom a removal proceeding may be or has been commenced, shall be
3 entitled to representation by assigned counsel and related assistance,
4 pursuant to subdivision one of section thirty-five of the judiciary law,
5 when the person:

6 (a) was present in this state when questioned, taken into custody,
7 charged, summoned or presented with the allegations of the removal
8 proceedings, and the person resides or is detained in either this state
9 or an adjoining state; or

10 (b) resided in this state when questioned, taken into custody,
11 charged, summoned or presented with the allegations of the removal
12 proceedings, and the person continues to reside in this state or an
13 adjoining state, or if detained, continues to be detained in either this
14 state or an adjoining state.

15 2. Representation and related assistance provided in accordance with
16 subdivision one of this section shall be a state charge, pursuant to
17 subdivision one of section thirty-five of the judiciary law.

18 § 319-h. Effect on other laws. This article shall supersede conflict-
19 ing local laws, rules, policies, procedures and practices, except to the
20 extent that the provisions of any such local law, rule, policy or any
21 such procedure or practice may provide any additional or greater right
22 or protection. Nothing in this article shall prohibit any entity from
23 cooperating with a federal immigration authority to the extent required
24 by federal law. Nothing in this article shall be interpreted or applied
25 so as to create any power, duty or obligation in conflict with federal
26 law.

27 § 2. The opening paragraph of paragraph a of subdivision 1 of section
28 35 of the judiciary law is designated as subparagraph (i) and a new
29 subparagraph (ii) is added to read as follows:

30 (ii) Persons providing assigned counsel and related assistance in
31 immigration-related matters pursuant to section three hundred nineteen-g
32 of the executive law shall be compensated in accordance with this
33 section. In any case where a person entitled to assigned representation
34 pursuant to section three hundred nineteen-g of the executive law
35 petitions the criminal court of the city of New York, the county court
36 or district court, with jurisdiction where the person is to be ques-
37 tioned or detained, or is detained, or was charged in such immigration-
38 related matter, or most recently resided, the court shall assign coun-
39 sel, with appropriate expertise and experience in immigration-related
40 matters, in accordance with this section.

41 § 3. Severability. If any clause, sentence, subdivision, paragraph,
42 section or other part of this act shall be adjudged by any court of
43 competent jurisdiction to be invalid, such judgment shall not affect,
44 impair or invalidate the remainder thereof, but shall be confined in its
45 operation to the clause, sentence, subdivision, paragraph, section or
46 part thereof directly involved in the controversy in which such judgment
47 shall have been rendered.

48 § 4. This act shall take effect immediately.