

# STATE OF NEW YORK

4075--A

2017-2018 Regular Sessions

## IN SENATE

February 2, 2017

Introduced by Sens. SERRANO, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, 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.

14 319-f. Limitation on use of certain facilities.

15 319-g. Legal representation.

16 319-h. Effect on other laws.

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

19 1. "Agency" shall mean any state or municipal department, board,  
20 bureau, division, commission, committee, public authority, public corpo-  
21 ration, council, office or other governmental entity performing a

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

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1 governmental or proprietary function for the state or any one or more  
2 municipalities thereof.

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

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

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

12 5. "Federal immigration authority" shall mean any officer, employee  
13 or person otherwise paid by or acting as an agent of the United States  
14 immigration and customs enforcement or any division thereof or any other  
15 officer, employee or person otherwise paid by or acting as an agent of  
16 the United States department of homeland security or any other federal  
17 entity who is charged with enforcement of the provisions of any federal  
18 immigration law.

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

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

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

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

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

42 § 319-a. Access to services, assistance and eligible benefits. 1.  
43 Except where explicitly required by state or federal law for the purpose  
44 of verifying eligibility, continued eligibility, or upon recertif-  
45 ication, no state or local agency, or agent thereof, may make any  
46 inquiry or record any information concerning the immigration status or  
47 place of birth of a person who is seeking public assistance and care, as  
48 such phrase is defined in subdivision eighteen of section two of the  
49 social services law, or seeking any other benefit, assistance or service  
50 for himself, herself, or on behalf of a family or household member or  
51 any other potential beneficiary. Provided, further, that such informa-  
52 tion shall not be used or disclosed to any state or federal agency for  
53 any purpose other than verifying eligibility, continued eligibility, or  
54 upon recertification.

55 2. Notwithstanding the provisions of subdivision one of this section,  
56 limited inquiry of such information concerning the relevant person may

1 be made when such information is requested for the benefit of the person  
2 by the office for new Americans established pursuant to section ninety-  
3 four-b of this chapter or any other similar agency that is assisting  
4 such person in matters related to such person's immigration status,  
5 provided that the status of such person shall not be disclosed for any  
6 purpose.

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

13 § 319-b. Federal agencies to investigate and enforce federal immi-  
14 gration laws. 1. No state or local law enforcement agency, or agent  
15 thereof, shall stop, question, interrogate, investigate or arrest a  
16 person for any of the following:

17 (a) suspected United States immigration or citizenship status  
18 violation;

19 (b) suspected violation of the United States immigration law or  
20 authorized regulations; or

21 (c) a civil immigration detainer.

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

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

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

46 § 319-c. Confidentiality of information. Unless disclosure is required  
47 by a lawful court order, no state or local agency, or agent thereof, or  
48 state or local law enforcement agency, or agent thereof, shall provide  
49 to a federal immigration authority any information collected or obtained  
50 with respect to a person in accordance with this article or otherwise,  
51 including but not limited to home, work or school address, except that:

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

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

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

14 § 319-d. Custody of certain persons: bail and related pre-trial  
15 issues. 1. Except as provided in section three hundred nineteen-e of  
16 this article, no state or local law enforcement agency, or agent there-  
17 of, or court shall delay or deny release of a person on recognizance or  
18 bail, pursuant to article five hundred thirty of the criminal procedure  
19 law or otherwise, on the basis of the person's immigration status, a  
20 civil immigration detainer, or a federal immigration authority's request  
21 for notification about, transfer of, detention of, or interview or  
22 interrogation of such person.

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

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

40 § 319-e. Civil immigration detainers. 1. A state or local law enforce-  
41 ment agency, or agent thereof, lawfully holding a person in its custody,  
42 may thereafter detain such person solely on the basis of a civil immi-  
43 gration detainer, for a single period not exceeding forty-eight hours  
44 excluding weekends and holidays, beyond the time when such person would  
45 otherwise have been released from such agency's custody, only if:

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

50 (b) notice has been received from a court or any other governmental  
51 entity, documenting that the person illegally reentered the United  
52 States after a previous removal or return as defined in 8 U.S.C. §  
53 1326, and the person stands convicted of a violent felony offense as  
54 defined in subdivision one of section 70.02 of the penal law, or a class  
55 A felony offense defined in the penal law, or an offense in any other

1 jurisdiction that has the same essential elements of any such violent  
2 felony offense or class A felony offense; or

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

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

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

18 § 319-f. Limitation on use of certain facilities. 1. No state or local  
19 law enforcement agency, or agent thereof, shall provide a federal immi-  
20 gration agency, or agent thereof, with access to an individual in such  
21 law enforcement agency's custody or control.

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

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

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

50 § 319-g. Legal representation. 1. A person unable to afford counsel  
51 against whom a removal proceeding may be or has been commenced, shall be  
52 entitled to representation by assigned counsel and related assistance,  
53 pursuant to subdivision one of section thirty-five of the judiciary law,  
54 when the person:

55 (a) was present in this state when questioned, taken into custody,  
56 charged, summoned or presented with the allegations of the removal

1 proceedings, and the person resides or is detained in either this state  
2 or an adjoining state; or

3 (b) resided in this state when questioned, taken into custody,  
4 charged, summoned or presented with the allegations of the removal  
5 proceedings, and the person continues to reside in this state or an  
6 adjoining state, or if detained, continues to be detained in either this  
7 state or an adjoining state.

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

11 § 319-h. Effect on other laws. This article shall supersede conflict-  
12 ing local laws, rules, policies, procedures and practices, except to the  
13 extent that the provisions of any such local law, rule, policy or any  
14 such procedure or practice may provide any additional or greater right  
15 or protection. Nothing in this article shall prohibit any entity from  
16 cooperating with a federal immigration authority to the extent required  
17 by federal law. Nothing in this article shall be interpreted or applied  
18 so as to create any power, duty or obligation in conflict with federal  
19 law.

20 § 2. The opening paragraph of paragraph a of subdivision 1 of section  
21 35 of the judiciary law is designated as subparagraph (i) and a new  
22 subparagraph (ii) is added to read as follows:

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

34 § 3. Severability. If any clause, sentence, subdivision, paragraph,  
35 section or other part of this act shall be adjudged by any court of  
36 competent jurisdiction to be invalid, such judgment shall not affect,  
37 impair or invalidate the remainder thereof, but shall be confined in its  
38 operation to the clause, sentence, subdivision, paragraph, section or  
39 part thereof directly involved in the controversy in which such judgment  
40 shall have been rendered.

41 § 4. This act shall take effect immediately.