STATE OF NEW YORK

7849

IN SENATE

March 5, 2018

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

AN ACT to amend the executive law and the correction law, in relation to standards and policies for cooperation with federal immigration authorities

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

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

ARTICLE 15-AA

COOPERATION WITH IMMIGRATION AUTHORITIES

Section 319. Definitions.

319-a. Restrictions on New York law enforcement agency actions.

319-b. Standards for responding to United States immigration and customs enforcement holds.

319-c. Cooperation policies.

319-d. Severability.

§ 319. Definitions. For the purposes of this article, the following terms have the following meanings:

1. "New York law enforcement agency" means a state or local law enforcement agency, including school police or security departments. "New York law enforcement agency" does not include the department of corrections and community supervision.

2. "Local agency" means any city, county, city and county, special district, or other political subdivision of the state.

3. "Law enforcement official" means any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of persons in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of persons in juvenile detention facilities.

4. "Civil immigration warrant" means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the national crime information center database.

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

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5. "Immigration authority" means any federal, state, or local officer, employee, or person performing immigration enforcement functions.

6. "Health facility" means hospitals as defined in subdivision one of section twenty-eight hundred one of the public health law and facilities as defined in subdivision six of section 1.03 of the mental hygiene law.

7. "Immigration enforcement agency" means the United States immigration and customs enforcement (ICE) or United States customs and border protection as well as any other immigration enforcement authority.

8. "Hold request" means a federal immigration enforcement agency request that a New York law enforcement agency or the department of corrections and community supervision maintain custody of a person currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, department of homeland security (DHS) form I-247D.

9. "Notification request" means an immigration enforcement agency request that a New York law enforcement agency or the department of corrections and community supervision inform ICE of the release date and time in advance of the public of a person in its custody and includes, but is not limited to, DHS form I-247N.

10. "Transfer request" means an immigration enforcement agency request that a New York law enforcement agency or the department of corrections and community supervision facilitate the transfer of a person in its custody to ICE, and includes, but is not limited to, DHS form I-247X.

11. "Immigration enforcement" means any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States.

12. "Immigration hold" means an immigration detainer issued by an authorized immigration officer, pursuant to section 287.7 of title eight of the Code of Federal Regulations, that requests that the law enforcement official to maintain custody of a person for a period not to exceed forty-eight hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of such person.

13. "Joint law enforcement task force" means at least one New York law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.

14. "Judicial probable cause determination" means a determination made by a federal judge or federal magistrate judge that probable cause exists that a person has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take such person into custody.

15. "Judicial warrant" means a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

16. "Public schools" means all public elementary and secondary schools under the jurisdiction of local governing boards or a charter school board, the state university as defined in subdivision one of section three hundred fifty of the education law and community colleges as

defined in subdivision two of section sixty-three hundred one of the education law.

17. "School police and security departments" includes police and security departments of the state university of New York, community colleges, charter schools, public elementary and secondary schools and school districts.

§ 319-a. Restrictions on New York law enforcement agency actions. 1. New York law enforcement agencies shall not:

(a) Use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

(i) Inquiring into a person's immigration status.

(ii) Detaining a person on the basis of a hold request.

(iii) Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities in accordance with section three hundred nineteen-b of this article. Responses are never required, but are permitted under this subdivision, provided that they do not violate any local law or policy.

(iv) Providing personal information about a person as defined in subdivision seven of section ninety-two of the public officers law, including, but not limited to, such person's home address or work address unless that information is available to the public.

(v) Making or intentionally participating in arrests based on civil immigration warrants.

(vi) Assisting immigration authorities in the activities described in paragraph three of subsection (a) of section thirteen hundred fifty-seven of title eight of the United States code.

(vii) Performing the functions of an immigration officer, whether pursuant to subsection (g) of section thirteen hundred fifty-seven of title eight of the United States code or any other law, regulation, or policy, whether formal or informal.

(b) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to New York law governing conduct of peace officers and the policies of the employing agency.

(c) Use immigration authorities as interpreters for law enforcement matters relating to persons in agency or department custody.

(d) Transfer a person to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or in accordance with section three hundred nineteen-b of this article.

(e) Provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility.

(f) Contract with the federal government for use of New York law enforcement agency facilities to house individuals as federal detainees.

2. Notwithstanding the limitations in subdivision one of this section, this section does not prevent any New York law enforcement agency from doing any of the following that does not violate any policy of the law enforcement agency or any local law or policy of the jurisdiction in which the agency is operating:

(a) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a violation of, subsection (a) of section thirteen hundred twenty-six of title eight of the United States code that may be subject to the enhancement specified in paragraph two of subsection (b)

of section thirteen hundred twenty-six of title eight of the United States code and that is detected during an unrelated law enforcement activity. Transfers to immigration authorities are permitted under such subsection only in accordance with paragraph (d) of subdivision one of this section.

(b) Responding to a request from immigration authorities for information about a specific person's criminal history, including previous criminal arrests, convictions, or similar criminal history information accessed through the division of criminal justice services, where otherwise permitted by state law.

(c) Conducting enforcement or investigative duties associated with a joint law enforcement task force, including the sharing of confidential information with other law enforcement agencies for purposes of task force investigations, so long as the following conditions are met:

(i) The primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision eleven of section three hundred nineteen of this article.

(ii) The enforcement or investigative duties are primarily related to a violation of state or federal law unrelated to immigration enforcement.

(iii) Participation in the task force by a New York law enforcement agency does not violate any local law or policy to which it is otherwise subject.

(d) Making inquiries into information necessary to certify a person who has been identified as a potential crime or trafficking victim for a T or U visa pursuant to subparagraphs (T) and (U) of paragraph fifteen of subsection (a) of section eleven hundred one of title eight of the United States code or to comply with paragraph five of subsection (d) of section nine hundred twenty-two of title eighteen of the United States code.

(e) Giving immigration authorities access to interview a person in agency or department custody.

3. (a) If a New York law enforcement agency chooses to participate in a joint law enforcement task force, for which such agency has agreed to dedicate personnel or resources on an ongoing basis, such agency shall submit a report annually to the division of criminal justice services. Such agency shall report the following information, if known, for each task force of which it is a member:

(i) The purpose of the task force;

(ii) The federal, state, and local law enforcement agencies involved;

(iii) The total number of arrests made during the reporting period; and

(iv) The number of people arrested for immigration enforcement purposes.

(b) All law enforcement agencies shall report annually to the division of criminal justice services, in a manner specified by the commissioner of the division of criminal justice services, the number of transfers pursuant to paragraph (d) of subdivision one of this section, and the offense that allowed for the transfer, pursuant to such paragraph.

(c) All records described in this subdivision shall be public records for purposes of article six of the public officers law.

(d) If more than one New York law enforcement agency is participating in a joint task force that meets the reporting requirement pursuant to this section, the joint task force shall designate a local or state agency responsible for completing the reporting requirement.

4. The commissioner of the division of criminal justice services, by March first, two thousand nineteen, and annually thereafter, shall report on the total number of arrests made by joint law enforcement task forces, and the total number of arrests made for the purpose of immigration enforcement by all task force participants, including federal law enforcement agencies. To the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation or a related investigation, that information shall not be included in such report. The commissioner of the division of criminal justice services shall post the reports required by this subdivision on the division of criminal justice services internet web site.

5. This section does not prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of a person, or from requesting from federal immigration authorities immigration status information, lawful or unlawful, of any person, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to sections thirteen hundred seventy-three and sixteen hundred forty-four of title eight of the United States code.

6. Nothing in this section shall prohibit a New York law enforcement agency from asserting its own jurisdiction over criminal law enforcement matters.

§ 319-b. Standards for responding to United States immigration and customs enforcement holds. 1. A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by section three hundred nineteen-a of this article. Additionally, the specific activities described in subparagraph (iii) of paragraph (a) of subdivision one of such section and in paragraph (d) of subdivision one of such section shall only occur under the following circumstances:

(a) Such person has been convicted of a violent felony as defined in subdivision one of section 70.02 of the penal law.

(b) Such person has been convicted of a felony punishable by imprisonment in the state prison.

(c) Such person has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony, or has been convicted within the last fifteen years of a felony.

(d) Such person is a current registrant on the state sex offender registry pursuant to article six-C of the correction law.

(e) Such person has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph forty-three of subsection (a) of section one hundred one of the Federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States department of homeland security's immigration and customs enforcement as the subject of an outstanding federal felony arrest warrant.

2. In cases in which a person is arrested and taken before a magistrate on a charge involving a violent felony, as defined in subdivision one of section 70.02 of the penal law, or a felony that is punishable by imprisonment in state prison, and the court makes a finding of reasonable cause as to that charge pursuant to section 180.70 of the criminal procedure law, a law enforcement official shall additionally have discretion to cooperate with immigration officials pursuant to subpara-

graph (iii) of paragraph (a) of subdivision one of section three hundred nineteen-a of this article.

§ 319-c. Cooperation policies. 1. The attorney general of the state of New York, by October first, two thousand eighteen, in consultation with appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, public libraries, health facilities and shelters operated by the state or a political subdivision of the state, courthouses, department of labor facilities, the department of workers compensation and the department of social services, and ensuring that they remain safe and accessible to all New York residents, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement such model policy, or an equivalent policy.

2. For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the attorney general of the state of New York shall, by October first, two thousand eighteen, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that those databases are governed in a manner that limits the availability of information therein to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state and local law enforcement agencies shall adopt necessary changes to database governance policies consistent with such guidance.

§ 319-d. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 2. The correction law is amended by adding a new section 625 to read as follows:

§ 625. Cooperation with United States immigration and customs enforcement. 1. The department shall:

(a) In advance of any interview between the United States immigration and customs enforcement (ICE) and a person in department custody regarding civil immigration violations, provide such person with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present.

(b) Upon receiving any ICE hold, notification, or transfer request, as defined in section three hundred nineteen of the executive law, provide a copy of the request to such person and inform him or her whether the department intends to comply with the request.

2. The department shall not:

(a) Restrict access to any in-prison educational or rehabilitative programming, or credit-earning opportunity on the sole basis of citizenship or immigration status, including, but not limited to, whether a person is in removal proceedings, or immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against such person.

(b) Consider citizenship and immigration status as a factor in determining a person's custodial classification level, including, but not

limited to, whether such person is in removal proceedings, or whether immigration authorities have issued a hold request, transfer request, notification request, or civil immigration warrant against such person.

§ 3. This act shall take effect on the ninetieth 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.