

# STATE OF NEW YORK

8925

## IN SENATE

June 5, 2018

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

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:

24 (a) a person described in subdivision one of this section may bring a  
25 civil action for appropriate equitable and declaratory relief if such  
26 person has reasonable cause to believe a violation of subdivision one of

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

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1 this section, as described in subdivision two of this section, or a  
2 violation of section four-a of the judiciary law, has occurred or may  
3 occur; and

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

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

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

16 6. As used in this section:

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

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

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

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

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

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

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

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

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

45 § 4-a. Certain powers of the courts regarding civil arrests. In order  
46 to maintain access to the court and open judicial proceedings for all  
47 persons in their individual capacity and to prevent interference with  
48 the needs of judicial administration, a court has the power to issue  
49 appropriate judicial orders to protect the privilege from civil arrest,  
50 in accordance with article three of the civil rights law.

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

53 (w) (i) In order to maintain access to the court and open judicial  
54 proceedings for all persons in their individual capacity and to prevent  
55 interference with the needs of judicial administration, consistent with  
56 section twenty-eight of the civil rights law and section four-a of this

1 chapter, direct that court personnel responsible for all courthouses and  
2 the places of all court proceedings in the state shall not allow access  
3 to such courthouses and places of court proceedings to non-local law  
4 enforcement personnel seeking to enter such locations with respect to  
5 violation or violations of federal immigration law unless presented with  
6 a valid judicial warrant or judicial order, and designated counsel of  
7 the unified court system has individually reviewed and confirmed in  
8 writing the authenticity of such judicial warrant or judicial order.

9 Non-local law enforcement personnel seeking to enter such a location  
10 with respect to violation or violations of federal immigration law shall  
11 identify themselves and such purpose, and present such judicial warrant  
12 or judicial order to such responsible court personnel when seeking such  
13 access. The chief administrator shall promulgate rules consistent with  
14 this subdivision designed to implement the provisions of this paragraph.

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

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

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

51 § 6. This act shall take effect immediately.