

STATE OF NEW YORK

3049

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 -- read once and referred to the Committee on Codes

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:

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

ARTICLE 15-AA

ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED MATTERS

Section 319. Definitions.

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

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

319-c. Confidentiality of information.

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

319-e. Civil immigration warrants.

319-f. Limitation on use of certain facilities.

319-g. Legal representation.

319-h. Prohibition on certain databases and registries.

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

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

LBD09294-02-7

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

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

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

12 4. "Federal immigration authority" shall mean any officer, employee or
13 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 5. "Health care provider" shall mean a health care provider as defined
20 in subdivision six of section two hundred thirty-eight of the public
21 health law.

22 6. "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 7. "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 8. "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 9. "Terrorist screening database" shall mean the United States terror-
40 ist watch list database lawfully maintained by the terrorist screening
41 center of the government of the United States.

42 § 319-a. Access to services, assistance and eligible benefits. 1. No
43 state or local agency, or agent thereof, or health care provider may
44 make any inquiry or record any information concerning the immigration
45 status of a person who is seeking assistance, services or benefits for
46 himself, herself, or a family or household member as defined in subdivi-
47 sion two of section four hundred fifty-nine-a of the social services law
48 or for any other potential beneficiary of such assistance, services or
49 benefits.

50 2. No state or local law enforcement agency, or agent thereof, shall
51 make any inquiry or record any information concerning the immigration
52 status of a person who contacts, approaches or asks for or is in need of
53 the assistance of a law enforcement agency.

54 3. Notwithstanding the provisions of subdivisions one and two of this
55 section, limited inquiry and recording of such information concerning
56 the relevant person may be made when, as documented with specificity in

1 such agency, employee or agent's or health care provider's case record
2 of the matter, such person's immigration status is:

3 (a) directly relevant as a lawful criterion for such person's eligi-
4 bility for the specific mode of assistance, services or benefits sought;

5 (b) directly and highly relevant to the subject matter of a specific,
6 ongoing law enforcement investigation engaged in by such state or local
7 law enforcement agency or agent thereof;

8 (c) specifically required to be obtained by such agency or agent ther-
9 eof, or health care provider, by state or federal law;

10 (d) requested by a health care provider for the benefit of the person,
11 including but not limited to the referral of such person to benefits and
12 services they may be eligible for, provided that the immigration status
13 of such person shall not be documented in any medical record and shall
14 not be disclosed for any purpose; or

15 (e) requested for the benefit of the person by the office for new
16 Americans established pursuant to section ninety-four-b of this chapter,
17 the bureau of refugee and immigration assistance within the office of
18 temporary and disability assistance, or any other similar agency that is
19 assisting such person in matters related to such person's immigration
20 status, provided that the status of such person shall not be disclosed
21 for any purpose.

22 4. In addition to any other right to the assistance of interpretation
23 or translation services, any foreign-born person, or person not profi-
24 cient in the English language, to whom inquiry is made pursuant to this
25 section shall be entitled to the assistance of a neutral and qualified
26 interpreter or translator, as the case may be, with respect to such
27 inquiry, provided at no cost or expense to such person.

28 § 319-b. Federal agencies to investigate and enforce federal immi-
29 gration laws. 1. No state or local law enforcement agency, or agent
30 thereof, shall stop, question, interrogate, investigate or arrest an
31 individual for any of the following:

32 (a) suspected United States immigration or citizenship status
33 violation;

34 (b) suspected civil violation of the United States immigration law or
35 authorized regulations; or

36 (c) a civil immigration warrant.

37 2. No state or local law enforcement agency, nor agent thereof, shall
38 make any inquiry or record any information concerning the immigration
39 status of an individual who contacts, approaches or asks for or is in
40 need of the assistance of a law enforcement agency, except to the extent
41 necessary and authorized pursuant to this article.

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

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

1 § 319-c. Confidentiality of information. Unless disclosure is required
2 by a lawful court order, no state or local agency, or employee or agent
3 thereof, or health care provider or state or local law enforcement agen-
4 cy, or agent thereof, shall provide to a federal immigration authority
5 any information collected or obtained with respect to a person in
6 accordance with this article or otherwise, including but not limited to
7 home, work or school address, except that:

8 1. immigration status information shall be provided if requested by
9 such federal immigration authority and required to be provided to it in
10 accordance with 8 U.S.C. 1373 or another controlling federal law;

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

17 3. except as provided in subdivision four of this section, a health
18 care provider may provide to a federal immigration authority medical
19 record information, not including immigration status information, with
20 the consent of the subject of such medical record information, provided
21 in accordance with the public health law; and

22 4. a state or local agency, or employee or agent thereof, or health
23 care provider or state or local law enforcement agency, or agent there-
24 of, may provide such information, other than the information described
25 in subdivision one of this section, concerning an individual, including
26 but not limited to physical or psychological disability information,
27 status as a victim of or witness to suspected criminal activity, home
28 address, work address, and/or status as an applicant or recipient of
29 public assistance, only with informed written consent of the individual
30 and, if represented by counsel, written authorization by such attorney.

31 § 319-d. Custody of certain persons: bail and related pre-trial
32 issues. 1. Except as provided in section three hundred nineteen-e of
33 this article, no state or local law enforcement agency, or agent there-
34 of, or court shall delay or deny release of a person on recognizance or
35 bail, pursuant to article five hundred thirty of the criminal procedure
36 law or otherwise, on the basis of the person's immigration status, a
37 civil immigration warrant, or a federal immigration authority's request
38 for notification about, transfer of, detention of, or interview or
39 interrogation of such person.

40 2. Upon receipt from a federal immigration authority of a civil immi-
41 gration warrant, or a request for transfer, notification, interview,
42 interrogation or other request, a state or local law enforcement agency,
43 or agent thereof, shall promptly notify the person who is the subject of
44 such warrant or request, provide a copy of such warrant or request to
45 such person, as the case may be, and inform such person of the right to
46 counsel provisions of section three hundred nineteen-g of this article,
47 and, inform such person, reasonably in advance of responding to the
48 federal immigration authority, as to whether or not such agency intends
49 to comply with such warrant or request.

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

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

7 (a) an authorized federal immigration agency presents such state or
8 local law enforcement agency with a judicial warrant for the detention
9 of the person who is the subject of such civil immigration warrant at
10 the time such civil immigration warrant is presented; or

11 (b) notice has been received from a court or any other governmental
12 entity, documenting that there is probable cause to believe the person
13 illegally reentered the United States after a previous removal or return
14 as defined in 8 U.S.C. § 1326, and the person stands convicted of a
15 violent felony offense as defined in subdivision one of section 70.02 of
16 the penal law, or a class A felony offense defined in the penal law, or
17 an offense in any other jurisdiction that has the same essential
18 elements of any such violent felony or class A offense; or

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

22 2. Except to the extent that disclosure is required by federal law, no
23 state or local law enforcement agency, or agent thereof, shall provide
24 to a federal immigration authority, or another agency, entity or person
25 on behalf of a federal immigration authority, any information obtained
26 concerning a person who is in or formerly was in the custody of such
27 state or local law enforcement agency, or agent thereof, including but
28 not limited to the person's release date, court appearance date or
29 dates, home, work or school address.

30 3. Nothing in this section shall be construed to confer any authority
31 on an entity to detain a person based on a civil immigration warrant
32 beyond the authority, if any, to do so that existed prior to the enact-
33 ment of this section.

34 4. This section shall supersede any conflicting policy, rule, proce-
35 dure and practice within the state of New York. Nothing in this section
36 shall be construed to prohibit any entity from cooperating with a feder-
37 al immigration authority to the extent required by federal law. Nothing
38 in this section shall be interpreted or applied so as to create any
39 power, duty or obligation in conflict with any federal law.

40 § 319-f. Limitation on use of certain facilities. 1. No state or local
41 law enforcement agency, or agent thereof, shall provide a federal immi-
42 gration agency, or agent thereof, with access to an individual in such
43 law enforcement agency's custody or control.

44 2. Notwithstanding the provisions of subdivision one of this section,
45 a person in the custody of a state or local law enforcement agency may
46 request to be interviewed by a federal law enforcement agency or an
47 agent thereof only with knowing and voluntary written consent of the
48 individual and, if represented by counsel, written authorization by such
49 counsel, provided that if such individual is not represented and is
50 entitled to counsel assigned pursuant to section three hundred nine-
51 teen-g of this article or article eighteen-B of the county law, he or
52 she shall be notified of such right and provided a reasonable opportu-
53 nity to obtain such counsel before any such interview.

54 3. In addition to any other right to the assistance of interpretation
55 or translation services, any foreign-born person, or person not profi-
56 cient in the English language, to whom inquiry is made pursuant to this

1 section shall be entitled to the assistance of a neutral and qualified
2 interpreter or translator, as the case may be, with respect to such
3 inquiry, provided at no cost or expense to such person.

4 4. Except as provided in subdivision two of this section, federal
5 immigration authorities shall not be permitted to use or maintain, for
6 the purpose of interviewing any person or witness or investigating or
7 adjudicating any alleged violation of federal immigration law, any
8 office or quarters in any building or facility or any land owned, leased
9 or operated by a state or local law enforcement agency.

10 § 319-g. Legal representation. 1. A person unable to afford counsel
11 against whom there is probable cause to commence a removal proceeding or
12 against whom such a proceeding has been commenced, shall be entitled to
13 representation by assigned counsel and related assistance, pursuant to
14 subdivision one of section thirty-five of the judiciary law, when the
15 person:

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

20 (b) resided in this state when questioned, taken into custody,
21 charged, summoned or presented with the allegations of the removal
22 proceedings, and the person continues to reside in this state or an
23 adjoining state, or if detained, continues to be detained in either this
24 state or an adjoining state.

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

28 § 319-h. Prohibition on certain databases and registries. No state or
29 local law enforcement agency may use any funds, facilities, property,
30 equipment or personnel of such agency to investigate, enforce or provide
31 assistance in the investigation or enforcement of any federal program
32 requiring registration of individuals, or maintaining a database of
33 individuals, on the basis of race, color, creed, gender, sexual orien-
34 tation, religion, or national or ethnic origin.

35 § 2. The opening paragraph of paragraph a of subdivision 1 of section
36 35 of the judiciary law is designated as subparagraph (i) and a new
37 subparagraph (ii) is added to read as follows:

38 (ii) Persons providing assigned counsel and related assistance in
39 immigration-related matters pursuant to section three hundred nineteen-g
40 of the executive law shall be compensated in accordance with this
41 section. In any case where a person entitled to assigned representation
42 pursuant to section three hundred nineteen-g of the executive law
43 petitions the criminal court of the city of New York, the county court
44 or district court, with jurisdiction where the person is to be ques-
45 tioned or detained, or is detained, or was charged in such immigration-
46 related matter, or most recently resided, the court shall assign counsel
47 in accordance with this section.

48 § 3. Severability. If any clause, sentence, subdivision, paragraph,
49 section or other part of this act shall be adjudged by any court of
50 competent jurisdiction to be invalid, such judgment shall not affect,
51 impair or invalidate the remainder thereof, but shall be confined in its
52 operation to the clause, sentence, subdivision, paragraph, section or
53 part thereof directly involved in the controversy in which such judgment
54 shall have been rendered.

55 § 4. This act shall take effect immediately.