

# STATE OF NEW YORK

4075

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

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 Assem-  
bly, do enact as follows:

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

3 ARTICLE 15-AA

4 ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED  
5 MATTERS

6 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 warrants.

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

15 319-g. Legal representation.

16 319-h. Prohibition on certain databases and registries.

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  
22 governmental or proprietary function for the state or any one or more  
23 municipalities thereof.

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

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

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

7 4. "Federal immigration authority" shall mean any officer, employee or  
8 person otherwise paid by or acting as an agent of the United States  
9 immigration and customs enforcement or any division thereof or any other  
10 officer, employee or person otherwise paid by or acting as an agent of  
11 the United States department of homeland security or any other federal  
12 entity who is charged with enforcement of the provisions of any federal  
13 immigration law.

14 5. "Health care provider" shall mean a health care provider as defined  
15 in subdivision six of section two hundred thirty-eight of the public  
16 health law.

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

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

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

34 9. "Terrorist screening database" shall mean the United States terror-  
35 ist watch list database lawfully maintained by the terrorist screening  
36 center of the government of the United States.

37 § 319-a. Access to services, assistance and eligible benefits. 1. No  
38 state or local agency, or agent thereof, or health care provider may  
39 make any inquiry or record any information concerning the immigration  
40 status of a person who is seeking assistance, services or benefits for  
41 himself, herself, or a family or household member as defined in subdivi-  
42 sion two of section four hundred fifty-nine-a of the social services law  
43 or for any other potential beneficiary of such assistance, services or  
44 benefits.

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

49 3. Notwithstanding the provisions of subdivisions one and two of this  
50 section, limited inquiry and recording of such information concerning  
51 the relevant person may be made when, as documented with specificity in  
52 such agency, employee or agent's or health care provider's case record  
53 of the matter, such person's immigration status is:

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

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

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

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

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

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

24 § 319-b. Federal agencies to investigate and enforce federal immi-  
25 gration laws. 1. No state or local law enforcement agency, or agent  
26 thereof, shall stop, question, interrogate, investigate or arrest an  
27 individual for any of the following:

28 (a) suspected United States immigration or citizenship status  
29 violation;

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

32 (c) a civil immigration warrant.

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

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

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

52 § 319-c. Confidentiality of information. Unless disclosure is required  
53 by a lawful court order, no state or local agency, or employee or agent  
54 thereof, or health care provider or state or local law enforcement agen-  
55 cy, or agent thereof, shall provide to a federal immigration authority  
56 any information collected or obtained with respect to a person in

1 accordance with this article or otherwise, including but not limited to  
2 home, work or school address, except that:

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

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

12 3. except as provided in subdivision four of this section, a health  
13 care provider may provide to a federal immigration authority medical  
14 record information, not including immigration status information, with  
15 the consent of the subject of such medical record information, provided  
16 in accordance with the public health law; and

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

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

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

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

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

1 (a) an authorized federal immigration agency presents such state or  
2 local law enforcement agency with a judicial warrant for the detention  
3 of the person who is the subject of such civil immigration warrant at  
4 the time such civil immigration warrant is presented; or

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

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

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

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

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

34 § 319-f. Limitation on use of certain facilities. 1. No state or local  
35 law enforcement agency, or agent thereof, shall provide a federal immi-  
36 gration agency, or agent thereof, with access to an individual in such  
37 law enforcement agency's custody or control.

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

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

54 4. Except as provided in subdivision two of this section, federal  
55 immigration authorities shall not be permitted to use or maintain, for  
56 the purpose of interviewing any person or witness or investigating or

1 adjudicating any alleged violation of federal immigration law, any  
2 office or quarters in any building or facility or any land owned, leased  
3 or operated by a state or local law enforcement agency.

4 § 319-g. Legal representation. 1. A person unable to afford counsel  
5 against whom there is probable cause to commence a removal proceeding or  
6 against whom such a proceeding has been commenced, shall be entitled to  
7 representation by assigned counsel and related assistance, pursuant to  
8 subdivision one of section thirty-five of the judiciary law, when the  
9 person:

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

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

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

22 § 319-h. Prohibition on certain databases and registries. No state or  
23 local law enforcement agency may use any funds, facilities, property,  
24 equipment or personnel of such agency to investigate, enforce or provide  
25 assistance in the investigation or enforcement of any federal program  
26 requiring registration of individuals, or maintaining a database of  
27 individuals, on the basis of race, color, creed, gender, sexual orien-  
28 tation, religion, or national or ethnic origin.

29 § 2. The opening paragraph of paragraph a of subdivision 1 of section  
30 35 of the judiciary law is designated as subparagraph (i) and a new  
31 subparagraph (ii) is added to read as follows:

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

42 § 3. Severability. If any clause, sentence, subdivision, paragraph,  
43 section or other 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 its  
46 operation to the clause, sentence, subdivision, paragraph, section or  
47 part thereof directly involved in the controversy in which such judgment  
48 shall have been rendered.

49 § 4. This act shall take effect immediately.