

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.