STATE OF NEW YORK

4964

2019-2020 Regular Sessions

IN ASSEMBLY

February 6, 2019

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the correction law, in relation to enacting the New York Values Act providing for a clear distinction between New York law enforcement and federal immigration enforcement

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

Section 1. This act shall be known and may be cited as the "New York values act".

§ 2. Legislative findings. The legislature hereby finds and declares the following:

1. Immigrants are valuable and essential to the fabric and the identity of New York. Approximately one in five New Yorkers is foreign born and approximately one in three children in New York has at least one foreign born parent.

2. A relationship of trust between New York's immigrant community and state and local agencies is critical to the public safety of all New Yorkers and those who visit our state.

3. This trust is threatened when state and local agencies are entangled with federal immigration enforcement. New Yorkers are less secure when fewer immigrants seek basic services out of fear of encountering immigration enforcement. No New Yorker should be so dissuaded that he or she is afraid to approach law enforcement when they are victims of or witnesses to crimes, to seek medical care, or to attend or drop their children off at school.

4. Entangling state and local agencies with federal immigration enforcement programs diverts already limited state and local resources and blurs the lines of accountability between local, state, and federal governments.

5. State and local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect

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

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that New Yorkers could be detained in violation of section twelve of article one of the constitution of the state of New York and the fourth amendment to the constitution of the United States, targeted on the basis of race or ethnicity in violation of the equal protection clauses of the constitutions of New York and the United States, or denied access to education based on immigration status.

6. This act seeks to ensure effective policing, to protect the safety, well-being, and constitutional rights of all New Yorkers, and to direct the state's limited resources to matters of greatest concern to state and local governments.

§ 3. The executive law is amended by adding a new article 11-A to read as follows:

ARTICLE 11-A
NEW YORK VALUES

Section 233. Definitions.
234. New York values.
235. Special provisions governing interaction between New York law enforcement and immigration and customs enforcement.
236. Model policies.
237. Enforcement by attorney general.

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

1. "New York law enforcement agency" means the state police including university police of the state of New York and any agency of a village, town, city, county, special district, or other political subdivision of the state that is authorized to enforce criminal statutes, regulations, or local ordinances; or to operate jails or to maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

2. "Civil immigration detainer" shall mean an administrative request issued pursuant to 8 CFR 287.7 or any similar request issued by an agency or agent of the United States for the detention of a person suspected of violating the immigration law of the United States.

3. "Federal immigration authority" means any officer, employee, or person otherwise paid by or acting as an agent of the United States immigration and customs enforcement or United States customs and border protection, or any division thereof, or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security who is charged with immigration enforcement.

4. "Health facility" means any physical location where a health care practitioner or any other purveyor of health services performs or conducts services.

5. "Hold request" means a federal immigration and customs enforcement request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to immigration and customs enforcement.

6. "Notification request" means an immigration and customs enforcement request that a local law enforcement agency inform immigration and customs enforcement of the release date and time in advance of the public of an individual in its custody.

7. "Transfer request" means an immigration and customs enforcement request that a local law enforcement agency facilitate the transfer of an individual in its custody to immigration and customs enforcement.

8. "Immigration enforcement" includes 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, reentry, or employment in the United States. The term "immigration enforcement" does not include: (a) efforts to investigate, enforce, or assist in the investigation or enforcement of a violation of 8 USC 1326(a) that may be subject to the enhancement specified in 8 USC 1326 (b)(2) and that is detected during an unrelated law enforcement activity, or

(b) transferring an individual to federal immigration authorities for violation of 8 USC 1326(a) that is subject to the enhancement specified in 8 USC 1326(b) if the individual has been previously convicted of a violent felony listed in section 70.02 of the penal law.

9. "Joint law enforcement task force" means a New York law enforcement agency collaborating, engaging, or partnering with a federal law enforcement agency in investigating, interrogating, detaining, detecting, or arresting persons for violations of federal or state crimes.

10. "Judicial warrant" means a warrant based on probable cause and issued by a federal judge or federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant.

11. "Public schools" means all public elementary, secondary and college-level schools in the state.

§ 234. New York values. 1. New York law enforcement agencies shall not do any of the following:

(a) Use agency or department money, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes including, but not limited to, any of the following:

(1) Inquiring into an individual's immigration status.

(2) Detaining an individual on the basis of a hold request.

(3) Responding to requests for notification by providing release dates or other information unless that information is available to the public.

(4) Providing information regarding a person's release date unless that information is available to the public.

(5) Providing personal information about an individual, including, but not limited to, the individual's home address or work address unless that information is available to the public.

(6) Making arrests based on civil immigration detainers.

(7) Giving federal immigration authorities access to interview an individual in agency or department custody, except pursuant to a judicial warrant, and in accordance with section two hundred thirty-five of this article.

(8) Assisting federal immigration authorities in the activities described in 8 USC 1357(a)(3).

(9) Performing the functions of an immigration officer, whether pursuant to 8 USC 1357(g) or any other law, regulation or policy, whether formal or informal.

(b) Make agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein other than information regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement. Any agreements in existence on the date that this section becomes effective that conflict with the terms of

this paragraph are terminated on such date. A person or entity provided access to agency or department databases shall certify in writing that the database will not be used for any purpose prohibited by this section.

(c) Place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies except to the extent those peace officers remain subject to New York law governing conduct of peace officers and the policies of the employing agency.

(d) Use federal immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

(e) Transfer an individual to federal immigration authorities unless authorized by a judicial warrant or for a violation of USC 1326(a) that is subject to the enhancement specified in USC 1326 (b)(2) and the individual has been previously convicted of a violent felony listed in section 70.02 of the penal law.

2. Notwithstanding the limitations of subdivision one of this section, nothing in this section shall prevent any New York law enforcement agency from doing any of the following:

(a) Responding to a request from federal immigration authorities about a specific person's criminal history, including previous criminal arrests, convictions, and similar criminal history information, where otherwise permitted by state law.

(b) Participating in a joint law enforcement task force, so long as the primary purpose of the joint law enforcement task force is not immigration enforcement, as defined in subdivision eight of section two hundred thirty-three of this article, and participation in the task force by a New York law enforcement agency does not violate any local law or policy of the jurisdiction in which the agency is operating.

(c) Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U visa pursuant to section 8 USC 1011(a)(15)(T) or 8 USC 1101(a)(15)(U), to comply with 18 USC 922(d)(5), or to refer the individual for services from the office for new Americans established pursuant to section ninety-four b of this chapter.

(d) Responding to a notification request from federal immigration authorities for a person who is serving a term for the conviction of a misdemeanor or felony offense and has a current or prior conviction for a violent felony listed in section 70.02 of the penal law, provided that response would not violate any local law or policy.

3. If a New York law enforcement agency chooses to participate in a joint law enforcement task force, it shall submit a report every six months to the attorney general, as specified by the attorney general. The report shall detail for each task force operation, the purpose of the task force, the federal, state, and local law enforcement agencies involved, the number of New York law enforcement agency personnel involved, a description of arrests made for any federal and state crimes, and a description of the number of people arrested for immigration enforcement purposes. The reporting agency or the attorney general may determine a report, in whole or in part, shall not be subject to disclosure pursuant to article six of the public officers law, to the extent that disclosure of a particular item of information would endanger the safety of a person involved in the investigation or would endanger the successful completion of the investigation or a related investigation.

4. The attorney general, within fourteen months of the effective date of this section that added this article, and twice a year thereafter, shall report on the types and frequency of joint law enforcement task forces. The report shall include, for the reporting period, assessments on compliance with paragraph (b) of subdivision two of this section, a list of all New York law enforcement agencies that participate in joint law enforcement task forces, a list of joint law enforcement task forces for the violation of federal or state crimes, and the number of arrests made associated with joint law enforcement task forces for the purposes of immigration enforcement by all task force participants, including federal law enforcement agencies. The attorney general shall post the reports required by this subdivision on the attorney general's website.

5. Notwithstanding any other law, in no event shall a New York law enforcement agency transfer an individual to federal immigration authorities for purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for purposes of immigration enforcement absent a judicial warrant, except as provided in paragraph (d) of subdivision two of this section. This subdivision shall not limit the scope of subdivision one of this section.

§ 235. Special provisions governing interaction between New York law enforcement and immigration and customs enforcement. 1. In advance of any interview between immigration enforcement and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual 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. The written consent form shall be available in English, Spanish, Spanish Creole, Chinese, Jamaican Patois, Haitian Creole, French, Polish, German, Italian, Portuguese, Russian, Yiddish, Hebrew, Hungarian, Arabic, Persian, Hindi, Urdu, Gujarati, Tagalog, Vietnamese, Japanese, and Korean and as otherwise required by law.

2. Upon receiving any immigration and customs enforcement hold, notification, or transfer request, the local law enforcement agency shall provide a copy of the request to the individual and inform him or her whether the law enforcement agency intends to comply with the request. If a local law enforcement agency provides immigration and customs enforcement with notification that an individual is being, or will be, released on a certain date, the local law enforcement agency shall promptly provide the same notification in writing to the individual and to his or her attorney or to one additional person who the individual shall be permitted to designate.

3. All records relating to immigration and customs enforcement access provided by local law enforcement agencies, including all communication with immigration and customs enforcement, shall be public records for purposes of article six of the public officers law, including the exemptions provided by such article and, as permitted under such article, personal identifying information may be redacted prior to public disclosure. Records relating to immigration and customs enforcement access include, but are not limited to, data maintained by the local law enforcement agency regarding the number and demographic characteristics of individuals to whom the agency has provided immigration and customs enforcement access, the date immigration and customs enforcement access was provided, and whether the immigration and customs enforcement access was provided through a hold, transfer, or notification request or through other means.

4. Beginning January first, two thousand twenty, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided immigration and customs enforcement access to an individual during the last year shall hold at least one community forum during the following year, that is open to the public, in an accessible location, and with at least thirty days' notice to provide information to the public about immigration and customs enforcement access to individuals and to receive and consider public comment. As part of this forum, the local law enforcement agency may provide the governing body with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided immigration and customs enforcement access, the date immigration and customs enforcement access was provided, and whether the immigration and customs enforcement access was provided through a hold, transfer, or notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.

§ 236. Model policies. Within ninety days of the effective date of this section, in consultation with the 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 operated by the state or a political subdivision of the state, courthouses, department of labor facilities and shelters, and ensuring that they remain safe and accessible to all New Yorkers, regardless of immigration status. All public schools, health facilities operated by the state or a political subdivision of the state, and courthouses shall implement a model policy, or an equivalent policy. All other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the state university of New York, are encouraged to adopt the model policy.

§ 237. Enforcement by attorney general. In addition to the other remedies provided, whenever there shall be a violation of this article, application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court shall impose a civil penalty of not less than one thousand dollars and not more than three thousand dollars for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 4. Section 147 of the correction law, as amended by chapter 476 of the laws of 1970, is amended to read as follows:

§ 147. Alien inmates of correctional facilities. 1. The commissioner shall [~~within three months after admission of an alien inmate to a correctional facility cause an investigation to be made of the record and past history of such alien and shall upon the termination of such investigation cause the record of such alien, together with all facts disclosed by such investigation, and his recommendations as to deportation, to be forwarded to the United States immigration authorities having such matters in charge~~] notify United States immigration and customs enforcement of the scheduled release on parole or post release community supervision, or rerelease following a period of confinement pursuant to a parole revocation without a new commitment, of all aliens confined to a state prison serving a current term for the conviction of, or who have a prior conviction for, a violent felony listed in section 70.02 of the penal law.

2. The notification pursuant to subdivision one of this section shall be made at least sixty days prior to the scheduled release date or as soon as practicable if notification cannot be provided at least sixty days prior to release. The only non-publicly available personal information that the notification may include is the name of the person who is scheduled to be released and the scheduled date of release.

§ 5. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act, and the application of those provisions to persons other than those to which it is held invalid, shall not be affected thereby.

§ 6. This act shall take effect immediately.