STATE OF NEW YORK

2176

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

Introduced by M. of A. SOLAGES, CRESPO, PICHARDO, LENTOL, PEOPLES-STOKES, BICHOTTE, NIOU, BARRON, DAVILA, DE LA ROSA, DICKENS, EPSTEIN, FERNANDEZ, HEVESI, HYNDMAN, JAFFEE, JEAN-PIERRE, MOSLEY, O'DONNELL, PRETLOW, RAMOS, ROZIC, SEAWRIGHT, WEPRIN, WILLIAMS, WRIGHT, LAVINE, KIM, GOTTFRIED, D'URSO, PERRY, JOYNER, ORTIZ, FAHY, SIMON, BUCHWALD, LIFTON, ARROYO, GLICK, L. ROSENTHAL, TAYLOR, CAHILL, COOK, RIVERA, OTIS, PAULIN -- read once and referred to the Committee on Codes

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:

Section 1. This act shall be known and may be cited as the "protect our courts act".

§ 2. The civil rights law is amended by adding a new section 28 to read as follows:

§ 28. Civil arrest; certain locations. 1. A person duly and in good faith attending a court proceeding in which such person is a party or potential witness, or a family or household member is a party or potential witness, is privileged from civil arrest while going to, remaining at, and returning from, the place of such court proceeding, unless such civil arrest is supported by a judicial warrant or judicial order authorizing such civil arrest.

2. It is a contempt of the court and false imprisonment for any person to willfully violate subdivision one of this section, or an order of the court issued pursuant to section four-a of the judiciary law, by executing an arrest prohibited by subdivision one of this section or section four-a of the judiciary law, or willfully assisting or willfully facilitating an arrest prohibited by subdivision one of this section or

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

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section four-a of the judiciary law; provided, however, that nothing in this subdivision shall affect any right or defense of any person, police officer, peace officer or public officer pursuant to article thirty-five of the penal law.

3. Regardless of whether a proceeding for contempt of the court pursuant to subdivision two of this section has been initiated:

(a) a person described in subdivision one of this section may bring a civil action for appropriate equitable and declaratory relief if such person has reasonable cause to believe a violation of subdivision one of this section, as described in subdivision two of this section, or a violation of section four-a of the judiciary law, has occurred or may occur; and

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

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

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

6. As used in this section:

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

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

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

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

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

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

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

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

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

§ 4-a. Certain powers of the courts regarding civil arrests. In order to maintain access to the court and open judicial proceedings for all persons in their individual capacity and to prevent interference with

the needs of judicial administration, a court has the power to issue appropriate judicial orders to protect the privilege from civil arrest, in accordance with article three of the civil rights law.

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

(x) (i) In order to maintain access to the court and open judicial proceedings for all persons in their individual capacity and to prevent interference with the needs of judicial administration, consistent with section twenty-eight of the civil rights law and section four-a of this chapter, direct that court personnel responsible for all courthouses and the places of all court proceedings in the state shall not allow access to such courthouses and places of court proceedings to non-local law enforcement personnel seeking to enter such locations with respect to violation or violations of federal immigration law unless presented with a valid judicial warrant or judicial order, and designated counsel of the unified court system has individually reviewed and confirmed in writing the authenticity of such judicial warrant or judicial order. Non-local law enforcement personnel seeking to enter such a location with respect to violation or violations of federal immigration law shall identify themselves and such purpose, and present such judicial warrant or judicial order to such responsible court personnel when seeking such access. The chief administrator shall promulgate rules consistent with this subdivision designed to implement the provisions of this paragraph.

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

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

§ 5. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judg-

ment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 6. This act shall take effect immediately.