STATE OF NEW YORK

2176--A

Cal. No. 484

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, SIMOTAS, CRUZ, CARROLL, LUPARDO, DenDEKKER, STIRPE, RICHARDSON, JACOBSON, BUTTENSCHON, QUART, ZEBROWSKI, COLTON, GALEF, FALL, DINOWITZ, SAYEGH, BRONSON, RAYNOR, BLAKE, REYES, VANEL, WALKER, NOLAN, TITUS, AUBRY -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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.

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

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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 an arrest prohibited by subdivision one of this section or 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, or any unified court system personnel acting lawfully pursuant to their duty to maintain safety and order in the courts.

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.

7. No action or proceeding may be commenced pursuant to this section against the unified court system or any unified court system personnel acting lawfully pursuant to their duty to maintain safety and order in the courts.

§ 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 (aa) to read as follows:

(aa) (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, shall promulgate rules to ensure the following:

(A) any representative of a law enforcement agency who, while acting in an official capacity, enters a New York state courthouse intending to observe an individual or take an individual into custody shall identify himself or herself to uniformed court personnel and state his or her specific law enforcement purpose and the proposed enforcement action to be taken; any such representative who has a warrant or order concerning such intended arrest shall provide a copy of such warrant or order to such court personnel;

(B) any such warrant or order concerning such intended enforcement action shall be promptly reviewed by a judge or court attorney;

(C) information about any such proposed enforcement action shall be transmitted to and reviewed by appropriate court system personnel, including the judge presiding over any case involving the subject of that enforcement action;

(D) except in extraordinary circumstances, no arrest may be made by a representative of a law enforcement agency in a courtroom absent leave of the court;

(E) no civil arrest shall be executed inside a New York state court-house except pursuant to a judicial warrant or judicial order authoriz-ing the arrest;

(F) an unusual occurrence report shall be filed by court system personnel for every enforcement action taken inside the courthouse, including the observation of court proceedings by a representative of a law enforcement agency acting in such person's official capacity; and

(G) copies of all judicial warrants and judicial orders authorizing an arrest and provided to court personnel pursuant to this paragraph and the rules promulgated thereunder shall be maintained by the chief admin-istrator in a central record repository, appropriately indexed or filed alphabetically by name.

(ii) The chief administrator shall publish on the unified court system website and provide to the governor, the speaker of the assembly and the temporary president of the senate an annual report compiling statistics, aggregated by county, setting forth the date each 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 with respect to such warrant and the date and specific location of such arrest.

§ 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 judgment 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.