

# STATE OF NEW YORK

6607

2019-2020 Regular Sessions

## IN ASSEMBLY

March 14, 2019

Introduced by M. of A. DE LA ROSA -- read once and referred to the  
Committee on Correction

AN ACT to amend the correction law, in relation to persons not to be  
detained

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

1 Section 1. The correction law is amended by adding a new section 71-b  
2 to read as follows:

3 § 71-b. Persons not to be detained. 1. For the purposes of this  
4 section, the following terms shall have the following meanings:

5 (a) "Civil immigration detainer" shall mean a detainer issued pursuant  
6 to 8 C.F.R. 287.7.

7 (b) "Convicted of a crime" shall mean a final judgment of guilt  
8 entered on a misdemeanor or felony charge in any of the criminal courts  
9 of the state, as defined in section 10.10 of the criminal procedure law,  
10 or any other court of competent jurisdiction in the United States.  
11 Persons adjudicated as youthful offenders, pursuant to article seven  
12 hundred twenty of the criminal procedure law or a comparable provision  
13 of federal law or the law of another state, or juvenile delinquents, as  
14 defined by subdivision one of section 301.2 of the family court act or a  
15 comparable provision of federal law or the law of another state, shall  
16 not be considered convicted of a crime.

17 (c) "Federal immigration authorities" shall mean any officer, employee  
18 or person otherwise paid by or acting as an agent of United States immi-  
19 gration and customs enforcement or any division thereof or any other  
20 officer, employee or person otherwise paid by or acting as an agent of  
21 the United States department of homeland security who is charged with  
22 enforcement of the civil provisions of the immigration and nationality  
23 act.

24 (d) "Pending criminal case" shall mean a case in any of the criminal  
25 courts of the state, as defined in section 10.10 of the criminal proce-

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

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dure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state or a comparable court in another jurisdiction in the United States, where judgment has not been entered and where a misdemeanor or felony charge is pending. Any individual whose case is disposed of with an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the criminal procedure law or a comparable provision of federal law or the law of another state shall not be deemed to be a defendant in a pending criminal case. A case in which the highest charge is a violation or a non-criminal infraction, including a case in which an individual has been sentenced to conditional discharge for committing a violation or a non-criminal infraction pursuant to section 410.10 of the criminal procedure law or a comparable provision of federal law or the law of another state, shall not be deemed to be a pending criminal case.

(e) "Terrorist screening database" shall mean the United States terrorist watch list or any similar or successor list maintained by the United States.

2. (a) The department shall not honor a civil immigration detainer by:

(i) holding an individual beyond the time when such individual would otherwise be released from the department's custody, except for such reasonable time as is necessary to conduct the search specified in paragraph (b) of this subdivision, or

(ii) notifying federal immigration authorities of such individual's release.

(b) Paragraph (a) of this subdivision shall not apply when:

(i) a search, conducted at or about the time when such individual would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the state, indicates that such individual:

(A) has been convicted of a crime;

(B) is a defendant in a pending criminal case;

(C) has an outstanding criminal warrant in the state or another jurisdiction in the United States;

(D) is identified as a known gang member in the database of the national crime information center or any similar or successor database maintained by the United States; or

(E) is identified as a possible match in the terrorist screening database.

(ii) the search conducted pursuant to subparagraph (i) of this paragraph indicates, or the department has been informed by federal immigration authorities, that such individual:

(A) has an outstanding warrant of removal issued pursuant to 8 C.F.R. 241.2; or

(B) is or has previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1.

(c) Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to subdivision two of this section.

3. Nothing in this section shall be construed to confer any authority on any entity to hold individuals on civil immigration detainers beyond the authority, if any, that existed prior to the enactment of this section.

4. No later than the thirtieth of September, two thousand twenty and no later than the thirtieth of September of each year thereafter, the

1 department shall post a report on the department website that includes  
2 the following information for the preceding twelve month period:

3 (a) the number of individuals held pursuant to civil immigration  
4 detainers beyond the time when such individual would otherwise be  
5 released from the department's custody;

6 (b) the number of individuals transferred to the custody of federal  
7 immigration authorities pursuant to civil immigration detainers;

8 (c) the number of individuals transferred to the custody of federal  
9 immigration authorities pursuant to civil immigration detainers who had  
10 at least one felony conviction;

11 (d) the number of individuals transferred to the custody of federal  
12 immigration authorities pursuant to civil immigration detainers who had  
13 at least one misdemeanor conviction but no felony convictions;

14 (e) the number of individuals transferred to the custody of federal  
15 immigration authorities pursuant to civil immigration detainers who had  
16 no misdemeanor or felony convictions;

17 (f) the number of individuals transferred to the custody of federal  
18 immigration authorities pursuant to civil immigration detainers who had  
19 no misdemeanor or felony convictions and were identified as known gang  
20 members in the database of the national crime information center or a  
21 successor database maintained by the United States;

22 (g) the number of individuals transferred to the custody of federal  
23 immigration authorities pursuant to civil immigration detainers who had  
24 no misdemeanor or felony convictions and were identified as possible  
25 matches in the terrorist screening database;

26 (h) the number of individuals transferred to the custody of federal  
27 immigration authorities pursuant to civil immigration detainers who had  
28 no misdemeanor or felony convictions and were identified as both possi-  
29 ble matches in the terrorist screening database and known gang members  
30 in the database of the national crime information center or a successor  
31 database maintained by the United States;

32 (i) the number of individuals transferred to the custody of federal  
33 immigration authorities pursuant to civil immigration detainers who had  
34 no misdemeanor or felony convictions and were defendants in a pending  
35 criminal case;

36 (j) the amount of state criminal alien assistance funding requested  
37 and received from the federal government; and

38 (k) the number of individuals for whom civil immigration detainers  
39 were not honored pursuant to subdivision two of this section.

40 § 2. This act shall take effect on the one hundred twentieth day after  
41 it shall have become a law. Effective immediately, the addition, amend-  
42 ment and/or repeal of any rule or regulation necessary for the implemen-  
43 tation of this act on its effective date are authorized to be made and  
44 completed on or before such effective date.