

# STATE OF NEW YORK

425--A

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. HOYLMAN, BENJAMIN, BIAGGI, COMRIE, GIANARIS, GOUNARDES, JACKSON, KAPLAN, KAVANAGH, KRUEGER, LIU, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 an arrest prohibited  
17 by subdivision one of this section or section four-a of the judiciary

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

LBD05356-08-9

1 law; provided, however, that nothing in this subdivision shall affect  
2 any right or defense of any person, police officer, peace officer or  
3 public officer pursuant to article thirty-five of the penal law, or any  
4 unified court system personnel acting lawfully pursuant to their duty to  
5 maintain safety and order in the courts.

6 3. Regardless of whether a proceeding for contempt of the court pursu-  
7 ant to subdivision two of this section has been initiated:

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

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

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

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

26 6. As used in this section:

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

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

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

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

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

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

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

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

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

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

3 § 4-a. Certain powers of the courts regarding civil arrests. In order  
4 to maintain access to the court and open judicial proceedings for all  
5 persons in their individual capacity and to prevent interference with  
6 the needs of judicial administration, a court has the power to issue  
7 appropriate judicial orders to protect the privilege from civil arrest,  
8 in accordance with article three of the civil rights law.

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

11 (aa) (i) In order to maintain access to the court and open judicial  
12 proceedings for all persons in their individual capacity and to prevent  
13 interference with the needs of judicial administration, consistent with  
14 section twenty-eight of the civil rights law and section four-a of this  
15 chapter, shall promulgate rules to ensure the following:

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

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

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

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

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

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

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

45 (ii) The chief administrator shall publish on the unified court system  
46 website and provide to the governor, the speaker of the assembly and the  
47 temporary president of the senate an annual report compiling statistics,  
48 aggregated by county, setting forth the date each such judicial warrant  
49 or judicial order was signed, the judge and court which issued such  
50 judicial warrant or judicial order and the location of such court as  
51 shown by such document, the date such judicial warrant or judicial order  
52 was presented to counsel for the unified court system, a description of  
53 the type of judicial warrant or judicial order and, to the extent known  
54 to court personnel, whether or not an arrest occurred with respect to  
55 such warrant and the date and specific location of such arrest.

1 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-  
2 sion, section or part of this act shall be adjudged by any court of  
3 competent jurisdiction to be invalid, such judgment shall not affect,  
4 impair, or invalidate the remainder thereof, but shall be confined in  
5 its operation to the clause, sentence, paragraph, subdivision, section  
6 or part thereof directly involved in the controversy in which such judg-  
7 ment shall have been rendered. It is hereby declared to be the intent of  
8 the legislature that this act would have been enacted even if such  
9 invalid provisions had not been included herein.

10 § 6. This act shall take effect immediately.