STATE OF NEW YORK

3076--B

2021-2022 Regular Sessions

IN SENATE

January 27, 2021

Introduced by Sens. SALAZAR, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MYRIE, RAMOS, RIVERA, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- 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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the executive law, the general municipal law and the correction law, in relation to prohibiting and regulating the discovery and disclosure of immigration status; and to repeal certain provisions of the correction law relating thereto

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

Section 1. Section 1.20 of the criminal procedure law is amended by adding five new subdivisions 46, 47, 48, 49, and 50 to read as follows:

46. "Immigration authorities" means any officer, employee, or government employee who is responsible for enforcement of the federal Immigration and Nationality Act, including any officer or agent of United States Immigration and Customs Enforcement or United States Customs and Border Protection.

47. "Immigration enforcement" means the enforcement of any civil provision of the federal Immigration and Nationality Act or any provision of law that penalizes a person's presence in, entry into, or reentry into the United States.

48. "Immigration law" means any civil provision of the federal Immigration and Nationality Act and any provision of law that penalizes a person's presence in, entry into, or reentry into the United States.

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

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49. "Immigration detainer" means any document, form, or other communication requesting or directing that a police officer, peace officer, or government entity detain or maintain custody of an individual, for any period of time, for pickup by or transfer to immigration authorities.

50. "Civil immigration warrant" means any warrant for a violation of civil immigration law that is not issued by a judge appointed pursuant to Article III of the United States constitution or a federal magistrate judge appointed pursuant to 28 USC § 631, and includes any warrant entered into the national crime information center database.

§ 2. The criminal procedure law is amended by adding a new article 145 to read as follows:

ARTICLE 145
PROCEDURES FOR POLICE OFFICERS, PEACE OFFICERS, AND SCHOOL RESOURCE OFFICERS PERTAINING TO IMMIGRATION ENFORCEMENT

Section 145.05 Duties of police officers, peace officers, and school resource officers; immigration.
145.10 Direction by immigration authorities.
145.15 Immigration detainer; questioning, investigation or interrogation prohibited.
145.20 Inquiry into and collection of information about citizenship or immigration status prohibited.
145.25 Notification of immigration authorities prohibited.
145.30 Transfer of custody to immigration authorities.
145.35 Entry of immigration status into a database.
145.40 Immigration authorities as interpreters prohibited.
145.45 Written consent for interview.
145.50 Receipt of information regarding citizenship.
145.55 Compliance with court orders and judicial warrants.
145.60 Application of laws.

§ 145.05 Duties of police officers, peace officers, and school resource officers; immigration.

The duties and authority of police officers, peace officers, and school resource officers shall not include authority to engage in immigration enforcement. Police officers, peace officers, and school resource officers shall not use public resources for immigration enforcement.

§ 145.10 Direction by immigration authorities.

No police officer, peace officer, or school resource officer shall be subject to the direction or supervision of immigration authorities. No police officer, peace officer, or school resource officer shall participate in or be subject to any agreement for the purpose of immigration enforcement.

§ 145.15 Immigration detainer; questioning, investigation or interrogation prohibited.

No police officer, peace officer, or school resource officer shall question, investigate, or interrogate an individual solely on the basis of an immigration detainer, a civil immigration warrant, or an actual or suspected violation of immigration law.

§ 145.20 Inquiry into and collection of information about citizenship or immigration status prohibited.

1. No police officer, peace officer, or school resource officer shall inquire about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by that person.

2. No police officer, peace officer, or school resource officer shall collect information regarding citizenship, immigration status, national-

ity, or country of origin, unless required by law or necessary to administer a public program or benefit sought by that person.

§ 145.25 Notification of immigration authorities prohibited.

No police officer, peace officer, or school resource officer shall notify or otherwise communicate with immigration authorities regarding: (i) the date, time, or location that an individual will be released from custody; (ii) the time, date, or location of an individual's court appearance; or (iii) any other information available to police officers, peace officers, or school resource officers through or as a result of such employment as a police officer, peace officer, or school resource officer.

§ 145.30 Transfer of custody to immigration authorities.

No police officer, peace officer, or school resource officer shall transfer or facilitate the transfer of individuals in his or her custody to the custody of immigration authorities absent a valid court order or judicial warrant issued by an independent judge appointed pursuant to Article III of the United States constitution or federal magistrate judge appointed pursuant to 28 USC § 631 commanding the arrest of such individual.

§ 145.35 Entry of immigration status into a database.

No police officer, peace officer, or school resource officer shall enter a person's immigration status into any database maintained by any government entity unless required or necessary to administer a public program or benefit sought by such person.

§ 145.40 Immigration authorities as interpreters prohibited.

No police officer, peace officer, or school resource officer shall use immigration authorities as interpreters for law enforcement matters relating to individuals being interviewed, interrogated, investigated, or taken into custody.

§ 145.45 Written consent for interview.

1. In any instance in which immigration authorities are permitted access to an individual in the custody of a police officer, peace officer, or school resource officer for the purpose of being interviewed, the officer 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 with his or her attorney present. The written consent form shall be provided in English, Spanish, and the five most widely spoken languages in the county where the officer's agency or department is located.

2. After providing an individual in custody with a written consent form pursuant to subdivision one of this section, an officer shall keep a written record of whether the individual declined an interview, consented to an interview, or asked for an attorney to be present at the interview, and whether an interview occurred. The office or agency employing such officer shall maintain all such written records and shall compile an annual summary identifying the number of requests for interviews received and whether each individual declined the interview, consented to the interview, or asked for an attorney to be present at the interview, and how many interviews occurred. Such summary shall not include the personally identifiable information of any individual in custody, and shall be a public record.

§ 145.50 Receipt of information regarding citizenship.

The provisions of this article shall not prohibit police officers, peace officers, or school resource officers from sending or receiving

information regarding an individual's citizenship or immigration status to or from any local, state, or federal agency.

§ 145.55 Compliance with court orders and judicial warrants.

The provisions of this article shall not prohibit officers from complying with valid court orders or judicial warrants issued by an independent judge appointed pursuant to Article III of the United States constitution or federal magistrate judge appointed pursuant to 28 USC § 631.

§ 145.60 Application of laws.

The provisions of this article shall apply notwithstanding any other provisions of state or local law and shall not be construed to in any way expand the authority of state and local law enforcement officers to participate in immigration enforcement.

§ 3. The executive law is amended by adding a new section 256-b to read as follows:

§ 256-b. Duties of local probation departments regarding immigration enforcement. 1. For the purposes of this section, the terms "immigration authorities", "immigration enforcement", "immigration law", "immigration detainer" and "civil immigration warrant" shall have the same meaning as defined in section 1.20 of the criminal procedure law.

2. No probation agency or department, nor any employee thereof, shall inquire about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by such person.

3. No probation agency or department, nor any employee thereof, shall communicate with immigration authorities regarding a person presently or formerly under the supervision of such agency or department or disclose to immigration authorities information gained in the course of employment or available as a result of employment with such agency or department.

4. No probation agency or department, nor any employee thereof, shall collect information about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by such person.

5. No probation agency or department, nor any employee thereof, shall question, investigate, or interrogate an individual solely on the basis of an immigration detainer, a civil immigration warrant, or an actual or suspected violation of immigration law.

6. No probation agency or department, nor any employee thereof, shall permit non-local law enforcement agencies to access non-public areas of property or facilities under the control of such agency or department unless presented with a judicial warrant signed by a judge or independent magistrate authorizing a search or seeking the arrest of an individual present at the time the judicial warrant is presented.

7. In any instance in which immigration authorities are permitted access to an individual under the supervision of a probation agency or department for the purpose of being interviewed, the probation agency or department 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 with his or her attorney present. The written consent form shall be provided in English, Spanish, and the five most widely spoken languages in the county where the officer's agency or department is located.

8. No probation agency or department, nor any employee thereof, shall enter a person's immigration status into any database maintained by any

government entity unless required or necessary to administer a public program or benefit sought by such person.

9. No probation agency or department, nor any employee thereof, shall investigate a person's immigration status or immigration history.

10. No probation agency or department, nor any employee thereof, shall include a person's immigration status or immigration history in court-ordered reports.

11. No probation agency or department, nor any employee thereof, shall use immigration authorities as interpreters for law enforcement matters relating to individuals under the supervision of such agency or department.

12. The provisions of this section shall not prohibit employees of probation agencies or departments from sending or receiving information regarding an individual's citizenship or immigration status to or from any local, state, or federal agency.

13. The provisions of this section shall not prohibit probation departments or their employees from complying with valid court orders or judicial warrants issued by an independent judge appointed pursuant to Article III of the United States constitution or federal magistrate judge appointed pursuant to 28 USC § 631.

14. The provisions of this section shall apply notwithstanding any other provisions of state or local law and shall not be construed to in any way expand the authority of state and local law enforcement officers to participate in immigration enforcement.

§ 4. The executive law is amended by adding a new article 15-AA to read as follows:

ARTICLE 15-AA

RESTRICTIONS ON IMMIGRATION ENFORCEMENT BY STATE EMPLOYEES

Section 319. Definitions.

319-a. Restrictions on immigration enforcement by state employees.

§ 319. Definitions. As used in this article, the following terms shall have the following meanings:

1. "State entity" means: any agency under the executive authority of the governor; any agency for which the governor appoints the commissioner or highest ranking employee; any public benefit corporation, public authority, board, or commission for which the governor appoints the chief executive or a majority of the board members; any division, department, or office regulated under this chapter; the department of education and any public school district or charter school, division, office, or institution under the supervision of the department of education; all offices defined in article one of the public officers law; the department of civil service or any of its civil divisions as defined in article one of the civil service law; and any contractor while performing services on behalf of the state.

2. "State employee" means any individual employed by: any agency under the executive authority of the governor; any agency for which the governor appoints the commissioner or highest ranking employee; any public benefit corporation, public authority, board, or commission for which the governor appoints the chief executive or a majority of the board members; any division, department, or office regulated under this chapter; the department of education and any public school district or charter school, division, office, or institution under the supervision of the department of education; all offices defined in article one of the public officers law; the department of civil service or any of its civil

divisions as defined in article one of the civil service law; or any contractor while performing services on behalf of the state.

3. For the purposes of this section, the terms "immigration authorities", "immigration enforcement", "immigration law", "immigration detainer" and "civil immigration warrant" shall have the same meaning as defined in section 1.20 of the criminal procedure law.

§ 319-a. Restrictions on immigration enforcement by state employees. 1. No state employee shall use state resources, including but not limited to time spent while on duty or any state property, for immigration enforcement purposes.

2. No state entity or state employee shall disclose to immigration authorities an individual's personally identifiable information, including, but not limited to, a person's name, social security number, physical description, home address, telephone number, financial information, medical information, place of employment or education.

3. No state entity or state employee shall inquire about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by that person.

4. No state entity or state employee shall collect information about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by such person.

5. No state entity or state employee shall question, investigate, or interrogate an individual solely on the basis of an immigration detainer, a civil immigration warrant, or an actual or suspected violation of immigration law.

6. No state entity or state employee shall permit non-local law enforcement agencies to access non-public areas of property or facilities owned by or under the control of the state unless presented with a judicial warrant signed by a judge or independent magistrate authorizing a search or seeking the arrest of an individual present at the time the judicial warrant is presented.

7. No state entity or state employee shall enter a person's immigration status into any database maintained by any state entity unless required or necessary to administer a public program or benefit sought by that person.

8. No state entity or state employee shall use immigration authorities as interpreters for law enforcement matters relating to individuals such entities or employees interact with as part of their employment duties.

9. All requests for assistance made by immigration authorities to state entities or state employees acting in the course of their duties and all other communications between state employees and immigration authorities shall be recorded. Each state entity whose employees are subject to this section shall issue an annual report listing the number of such requests or communications and stating the content and outcome of each request or communication, which shall be promptly delivered to the office of the attorney general and which shall be a public record.

10. This section shall not prohibit state employees from sending or receiving information regarding an individual's citizenship or immigration status to or from any local, state, or federal agency.

11. The provisions of this article shall not prohibit state employees from complying with valid court orders or judicial warrants issued by an independent judge appointed pursuant to Article III of the United States constitution or federal magistrate judge appointed pursuant to 28 USC § 631.

12. The provisions of this article shall apply notwithstanding any other provisions of state or local law and shall not be construed to in any way expand the authority of state employees to participate in immigration enforcement.

§ 5. The general municipal law is amended by adding a new article 19-C to read as follows:

ARTICLE 19-C
DUTIES OF MUNICIPAL CORPORATIONS AND THEIR EMPLOYEES PERTAINING TO IMMIGRATION ENFORCEMENT

Section 995. Restriction on use of local resources for immigration enforcement.

§ 995. Restriction on use of local resources for immigration enforcement. (a) For the purposes of this section, the terms "immigration authorities", "immigration enforcement", "immigration law", "immigration detainer" and "civil immigration warrant" shall have the same meaning as defined in section 1.20 of the criminal procedure law.

(b) No resources of any municipal corporation shall be utilized for immigration enforcement. For the purposes of this subdivision, resources of a municipal corporation shall include, but not be limited to, time spent by the municipal corporation's employees, officers, contractors, or subcontractors while on duty and the use of any municipal corporation's property.

(c) No municipal corporation, nor any employee thereof, shall disclose to immigration authorities an individual's personally identifiable information, including but not limited to such person's name, social security number, physical description, any associated addresses, telephone number, financial information, medical information, or place of employment or education.

(d) No municipal corporation, nor any employee thereof, shall question, investigate, or interrogate an individual on the basis of an immigration detainer, a civil immigration warrant, or an actual or suspected violation of immigration law.

(e) No municipal corporation, nor any employee thereof, shall inquire about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by such person.

(f) No municipal corporation nor any employee thereof, shall collect information about a person's citizenship, immigration status, nationality, or country of origin, unless required by law or necessary to administer a public program or benefit sought by such person.

(g) No municipal corporation, nor any employee thereof, shall enter a person's immigration status into any database maintained by any municipal corporation unless required or necessary to administer a public program or benefit sought by such person.

(h) No municipal corporation, nor any employee thereof, shall permit non-local law enforcement agencies to access non-public areas of property or facilities under the control of such municipal corporation unless presented with a judicial warrant signed by a judge or independent magistrate authorizing a search or seeking the arrest of an individual present at the time the judicial warrant is presented.

(i) No municipal corporation, nor any employee thereof, shall use immigration authorities as interpreters for law enforcement matters relating to individuals such corporation or employees interact with as part of their employment duties.

(j) All requests for assistance made by immigration authorities to law enforcement agencies within a municipal corporation and all other commu-

nications between law enforcement officers within a municipal corporation and immigration authorities shall be recorded. Each municipal corporation shall issue an annual report listing the number of such requests or communications and stating the content and outcome of each request or communication, which shall be promptly delivered to the office of the attorney general and which shall be a public record.

(k) This section shall not prohibit municipal employees from sending or receiving information regarding an individual's citizenship or immigration status to or from any local, state, or federal agency.

(l) The provisions of this article shall not prohibit municipal corporations or their employees from complying with valid court orders or judicial warrants issued by an independent judge appointed pursuant to Article III of the United States constitution or federal magistrate judge appointed pursuant to 28 USC § 631, or from complying with valid writs of habeas corpus ad prosequendum or habeas corpus ad testificandum issued by a state court with the authority to do so pursuant to sections 580.30 and 650.30 of the criminal procedure law upon application by a district attorney.

(m) The provisions of this article shall apply notwithstanding any other provisions of state or local law and shall not be construed to in any way expand the authority of state and local employees to participate in immigration enforcement.

§ 6. Section 500-c of the correction law is amended by adding a new subdivision 4-a to read as follows:

4-a. (a) The chief administrative officer shall not, by formal agreement or otherwise, allow any officer or employee of a county correctional facility to be subject to the direction or supervision of immigration authorities, as defined in section 1.20 of the criminal procedure law.

(b) The chief administrative officer shall ensure that no officer or employee of a county correctional facility spends time while on duty or uses correctional facility resources for immigration enforcement, as defined in section 1.20 of the criminal procedure law.

(c) All requests for assistance made by immigration authorities to county jails or their officers acting in the course of their duties and all other communications between corrections personnel and immigration authorities shall be recorded. The chief administrative officer shall produce an annual report listing all such requests and communications and stating the content and outcome of request or communication, which shall be promptly delivered to the office of the attorney general and which shall be a public record.

§ 7. Section 147 of the correction law is REPEALED.

§ 8. Section 500-f of the correction law is REPEALED.

§ 9. Section 621 of the correction law is amended by adding a new subdivision 3 to read as follows:

3. This section shall not be construed to permit any law enforcement officer or agency of this state or its subdivisions to participate in or assist with immigration enforcement, as defined in section 1.20 of the criminal procedure law. All law enforcement officers or agencies furnishing information to agencies of other jurisdictions shall obtain from the recipient agency a certification that such information will not be used for immigration enforcement.

§ 10. The executive law is amended by adding a new section 63-e to read as follows:

§ 63-e. Immigration status reports and databases. 1. The office of the attorney general shall review all reports provided to it pursuant to article fifteen-AA of this chapter, article nineteen-C of the general

municipal law, and article twenty of the correction law and shall prepare an annual summary of such reports, which shall also identify any alleged omissions or discrepancies in the reported information and any information that may indicate a violation of state law. Such summary shall be a public record.

2. The attorney general shall establish a system to solicit and receive complaints from the public about improper use of resources by state or local entities or employees for immigration enforcement and improper sharing of information by state or local entities or employees with immigration authorities. The attorney general shall investigate all such complaints to determine whether a violation of state law occurred, and may bring civil actions against state or local entities or employees acting in their official capacity in the name of the people of the state of New York to obtain appropriate equitable or declaratory relief if the attorney general determines that a violation of state law occurred.

3. For any databases operated by state and local law enforcement agencies, including databases maintained for the agency by private vendors, the attorney general shall, by the first of January following the effective date of this section, in consultation with appropriate stakeholders, publish guidance, audit criteria, and training recommendations aimed at ensuring that such databases are governed in a manner that limits the availability of information contained therein, to the fullest extent practicable and consistent with federal and state law, to anyone or any entity for the purpose of immigration enforcement. All state and local law enforcement agencies are encouraged to adopt necessary changes to database governance policies consistent with such guidance.

§ 11. This act shall take effect immediately; provided, however, that the amendments to section 500-c of the correction law made by section six of this act shall not affect the repeal of such section and shall be deemed repealed therewith.