

STATE OF NEW YORK

2328

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. REYES, L. ROSENTHAL, RODRIGUEZ, WEPRIN, EPSTEIN, CARROLL, SIMON, DE LA ROSA, TAYLOR, QUART -- read once and referred to the Committee on Codes

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:

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

3 46. "Immigration authorities" means any officer, employee, or govern-
4 ment employee who is responsible for enforcement of the federal Immi-
5 gration and Nationality Act, including any officer or agent of United
6 States Immigration and Customs Enforcement or United States Customs and
7 Border Protection.

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

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

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

19 50. "Civil immigration warrant" means any warrant for a violation of
20 civil immigration law that is not issued by a judge appointed pursuant
21 to Article III of the United States constitution or a federal magistrate

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

LBD03012-01-1

1 judge appointed pursuant to 28 USC § 631, and includes any warrant
2 entered into the national crime information center database.

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

5 ARTICLE 145

6 PROCEDURES FOR POLICE OFFICERS, PEACE OFFICERS, AND SCHOOL RESOURCE
7 OFFICERS PERTAINING TO IMMIGRATION ENFORCEMENT

8 Section 145.05 Duties of police officers, peace officers, and school
9 resource officers; immigration.

10 145.10 Direction by immigration authorities.

11 145.15 Immigration detainer; questioning, investigation or
12 interrogation prohibited.

13 145.20 Inquiry into and collection of information about citi-
14 zenship or immigration status prohibited.

15 145.25 Notification of immigration authorities prohibited.

16 145.30 Transfer of custody to immigration authorities.

17 145.35 Entry of immigration status into a database.

18 145.40 Immigration authorities as interpreters prohibited.

19 145.45 Written consent for interview.

20 145.50 Receipt of information regarding citizenship.

21 145.55 Compliance with court orders and judicial warrants.

22 145.60 Application of laws.

23 § 145.05 Duties of police officers, peace officers, and school resource
24 officers; immigration.

25 The duties and authority of police officers, peace officers, and
26 school resource officers shall not include authority to engage in immi-
27 gration enforcement. Police officers, peace officers, and school
28 resource officers shall not use public resources for immigration
29 enforcement.

30 § 145.10 Direction by immigration authorities.

31 No police officer, peace officer, or school resource officer shall be
32 subject to the direction or supervision of immigration authorities. No
33 police officer, peace officer, or school resource officer shall partic-
34 ipate in or be subject to any agreement for the purpose of immigration
35 enforcement.

36 § 145.15 Immigration detainer; questioning, investigation or interro-
37 gation prohibited.

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

42 § 145.20 Inquiry into and collection of information about citizenship or
43 immigration status prohibited.

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

48 2. No police officer, peace officer, or school resource officer shall
49 collect information regarding citizenship, immigration status, national-
50 ity, or country of origin, unless required by law or necessary to admin-
51 ister a public program or benefit sought by that person.

52 § 145.25 Notification of immigration authorities prohibited.

53 No police officer, peace officer, or school resource officer shall
54 notify or otherwise communicate with immigration authorities regarding:
55 (i) the date, time, or location that an individual will be released from
56 custody; (ii) the time, date, or location of an individual's court

1 appearance; or (iii) any other information available to police officers,
2 peace officers, or school resource officers through or as a result of
3 such employment as a police officer, peace officer, or school resource
4 officer.

5 § 145.30 Transfer of custody to immigration authorities.

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

13 § 145.35 Entry of immigration status into a database.

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

18 § 145.40 Immigration authorities as interpreters prohibited.

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

23 § 145.45 Written consent for interview.

24 1. In any instance in which immigration authorities are permitted
25 access to an individual in the custody of a police officer, peace offi-
26 cer, or school resource officer for the purpose of being interviewed,
27 the officer shall provide the individual with a written consent form
28 that explains the purpose of the interview, that the interview is volun-
29 tary, and that he or she may decline to be interviewed or may choose to
30 be interviewed with his or her attorney present. The written consent
31 form shall be provided in English, Spanish, and the five most widely
32 spoken languages in the county where the officer's agency or department
33 is located.

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

46 § 145.50 Receipt of information regarding citizenship.

47 The provisions of this article shall not prohibit police officers,
48 peace officers, or school resource officers from sending or receiving
49 information regarding an individual's citizenship or immigration status
50 to or from any local, state, or federal agency.

51 § 145.55 Compliance with court orders and judicial warrants.

52 The provisions of this article shall not prohibit officers from
53 complying with valid court orders or judicial warrants issued by an
54 independent judge appointed pursuant to Article III of the United States
55 constitution or federal magistrate judge appointed pursuant to 28 USC §
56 631.

1 § 145.60 Application of laws.

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

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

8 § 256-b. Duties of local probation departments regarding immigration
9 enforcement. 1. For the purposes of this section, the terms "immi-
10 gration authorities", "immigration enforcement", "immigration law",
11 "immigration detainer" and "civil immigration warrant" shall have the
12 same meaning as defined in section 1.20 of the criminal procedure law.

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

17 3. No probation agency or department, nor any employee thereof, shall
18 communicate with immigration authorities regarding a person presently or
19 formerly under the supervision of such agency or department or disclose
20 to immigration authorities information gained in the course of employ-
21 ment or available as a result of employment with such agency or depart-
22 ment.

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

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

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

37 7. In any instance in which immigration authorities are permitted
38 access to an individual under the supervision of a probation agency or
39 department for the purpose of being interviewed, the probation agency or
40 department shall provide the individual with a written consent form that
41 explains the purpose of the interview, that the interview is voluntary,
42 and that he or she may decline to be interviewed or may choose to be
43 interviewed with his or her attorney present. The written consent form
44 shall be provided in English, Spanish, and the five most widely spoken
45 languages in the county where the officer's agency or department is
46 located.

47 8. No probation agency or department, nor any employee thereof, shall
48 enter a person's immigration status into any database maintained by any
49 government entity unless required or necessary to administer a public
50 program or benefit sought by such person.

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

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

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

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

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

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

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

20 ARTICLE 15-AA

21 RESTRICTIONS ON IMMIGRATION ENFORCEMENT BY STATE EMPLOYEES

22 Section 319. Definitions.

23 319-a. Restrictions on immigration enforcement by state employ-
24 ees.

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

27 1. "State entity" means: any agency under the executive authority of
28 the governor; any agency for which the governor appoints the commission-
29 er or highest ranking employee; any public benefit corporation, public
30 authority, board, or commission for which the governor appoints the
31 chief executive or a majority of the board members; any division,
32 department, or office regulated under this chapter; and any contractor
33 while performing services on behalf of the state.

34 2. "State employee" means any individual employed by: any agency under
35 the executive authority of the governor; any agency for which the gover-
36 nor appoints the commissioner or highest ranking employee; any public
37 benefit corporation, public authority, board, or commission for which
38 the governor appoints the chief executive or a majority of the board
39 members; any division, department, or office regulated under this chap-
40 ter; or any contractor while performing services on behalf of the state.

41 3. For the purposes of this section, the terms "immigration authori-
42 ties", "immigration enforcement", "immigration law", "immigration
43 detainer" and "civil immigration warrant" shall have the same meaning as
44 defined in section 1.20 of the criminal procedure law.

45 § 319-a. Restrictions on immigration enforcement by state employees.

46 1. No state employee shall use state resources, including but not limit-
47 ed to time spent while on duty or any state property, for immigration
48 enforcement purposes.

49 2. No state entity or state employee shall disclose to immigration
50 authorities an individual's personally identifiable information, includ-
51 ing, but not limited to, a person's name, social security number, phys-
52 ical description, home address, telephone number, financial information,
53 medical information, place of employment or education.

54 3. No state entity or state employee shall inquire about a person's
55 citizenship, immigration status, nationality, or country of origin,

1 unless required by law or necessary to administer a public program or
2 benefit sought by that person.

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

7 5. No state entity or state employee shall question, investigate, or
8 interrogate an individual solely on the basis of an immigration detain-
9 er, a civil immigration warrant, or an actual or suspected violation of
10 immigration law.

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

17 7. No state entity or state employee shall enter a person's immi-
18 gration status into any database maintained by any state entity unless
19 required or necessary to administer a public program or benefit sought
20 by that person.

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

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

32 10. This section shall not prohibit state employees from sending or
33 receiving information regarding an individual's citizenship or immi-
34 gration status to or from any local, state, or federal agency.

35 11. The provisions of this article shall not prohibit state employees
36 from complying with valid court orders or judicial warrants issued by an
37 independent judge appointed pursuant to Article III of the United States
38 constitution or federal magistrate judge appointed pursuant to 28 USC §
39 631.

40 12. The provisions of this article shall apply notwithstanding any
41 other provisions of state or local law and shall not be construed to in
42 any way expand the authority of state employees to participate in immi-
43 gration enforcement.

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

46 ARTICLE 19-C

47 DUTIES OF MUNICIPAL CORPORATIONS AND THEIR EMPLOYEES PERTAINING
48 TO IMMIGRATION ENFORCEMENT

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

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

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

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

13 (d) No municipal corporation, nor any employee thereof, shall ques-
14 tion, investigate, or interrogate an individual on the basis of an immi-
15 gration detainer, a civil immigration warrant, or an actual or suspected
16 violation of immigration law.

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

21 (f) No municipal corporation nor any employee thereof, shall collect
22 information about a person's citizenship, immigration status, nationali-
23 ty, or country of origin, unless required by law or necessary to admin-
24 ister a public program or benefit sought by such person.

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

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

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

39 (j) All requests for assistance made by immigration authorities to law
40 enforcement agencies within a municipal corporation and all other commu-
41 nications between law enforcement officers within a municipal corpo-
42 ration and immigration authorities shall be recorded. Each municipal
43 corporation shall issue an annual report listing the number of such
44 requests or communications and stating the content and outcome of each
45 request or communication, which shall be promptly delivered to the
46 office of the attorney general and which shall be a public record.

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

50 (l) The provisions of this article shall not prohibit municipal corpo-
51 rations or their employees from complying with valid court orders or
52 judicial warrants issued by an independent judge appointed pursuant to
53 Article III of the United States constitution or federal magistrate
54 judge appointed pursuant to 28 USC § 631.

55 (m) The provisions of this article shall apply notwithstanding any
56 other provisions of state or local law and shall not be construed to in

1 any way expand the authority of state and local employees to participate
2 in immigration enforcement.

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

5 4-a. (a) The chief administrative officer shall not, by formal agree-
6 ment or otherwise, allow any officer or employee of a county correction-
7 al facility to be subject to the direction or supervision of immigration
8 authorities, as defined in section 1.20 of the criminal procedure law.

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

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

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

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

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

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

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

34 § 63-e. Immigration status reports and databases. 1. The office of the
35 attorney general shall review all reports provided to it pursuant to
36 article fifteen-AA of this chapter, article nineteen-C of the general
37 municipal law, and article twenty of the correction law and shall
38 prepare an annual summary of such reports, which shall also identify any
39 alleged omissions or discrepancies in the reported information and any
40 information that may indicate a violation of state law. Such summary
41 shall be a public record.

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

52 3. For any databases operated by state and local law enforcement agen-
53 cies, including databases maintained for the agency by private vendors,
54 the attorney general shall, by January first, two thousand twenty-two in
55 consultation with appropriate stakeholders, publish guidance, audit
56 criteria, and training recommendations aimed at ensuring that such data-

1 bases are governed in a manner that limits the availability of informa-
2 tion contained therein, to the fullest extent practicable and consistent
3 with federal and state law, to anyone or any entity for the purpose of
4 immigration enforcement. All state and local law enforcement agencies
5 are encouraged to adopt necessary changes to database governance poli-
6 cies consistent with such guidance.

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