

STATE OF NEW YORK

2328--B

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. REYES, L. ROSENTHAL, WEPRIN, EPSTEIN, CARROLL, SIMON, TAYLOR, QUART, FORREST, STECK, CRUZ, BURGOS, ANDERSON, MITAYNES, O'DONNELL, DINOWITZ, CLARK, KELLES, GALLAGHER, OTIS, GONZALEZ-ROJAS, PRETLOW, SEAWRIGHT, MAMDANI, JACOBSON, HEVESI, VANEL, BURDICK, LAVINE, GOTTFRIED, MEEKS, JACKSON, THIELE, DAVILA, RAMOS, WALKER, FERNANDEZ, NIOU, JEAN-PIERRE, GLICK, JOYNER, PAULIN, TAPIA, SOLAGES, BRONSON, LUNSFORD, FAHY, DE LOS SANTOS, DICKENS, CUNNINGHAM, J. RIVERA, HYNDMAN, KIM, J. D. RIVERA -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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:

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

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

LBD03012-06-2

1 provision of law that penalizes a person's presence in, entry into, or
2 reentry into the United States.

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

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

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

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

17 ARTICLE 145

18 PROCEDURES FOR POLICE OFFICERS, PEACE OFFICERS, AND SCHOOL RESOURCE
19 OFFICERS PERTAINING TO IMMIGRATION ENFORCEMENT

20 Section 145.05 Duties of police officers, peace officers, and school
21 resource officers; immigration.

22 145.10 Direction by immigration authorities.

23 145.15 Immigration detainer; questioning, investigation or
24 interrogation prohibited.

25 145.20 Inquiry into and collection of information about citi-
26 zenship or immigration status prohibited.

27 145.25 Notification of immigration authorities prohibited.

28 145.30 Transfer of custody to immigration authorities.

29 145.35 Entry of immigration status into a database.

30 145.40 Immigration authorities as interpreters prohibited.

31 145.45 Written consent for interview.

32 145.50 Receipt of information regarding citizenship.

33 145.55 Compliance with court orders and judicial warrants.

34 145.60 Application of laws.

35 § 145.05 Duties of police officers, peace officers, and school resource
36 officers; immigration.

37 The duties and authority of police officers, peace officers, and
38 school resource officers shall not include authority to engage in immi-
39 gration enforcement. Police officers, peace officers, and school
40 resource officers shall not use public resources for immigration
41 enforcement.

42 § 145.10 Direction by immigration authorities.

43 No police officer, peace officer, or school resource officer shall be
44 subject to the direction or supervision of immigration authorities. No
45 police officer, peace officer, or school resource officer shall partic-
46 ipate in or be subject to any agreement for the purpose of immigration
47 enforcement.

48 § 145.15 Immigration detainer; questioning, investigation or interro-
49 gation prohibited.

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

54 § 145.20 Inquiry into and collection of information about citizenship or
55 immigration status prohibited.

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

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

9 § 145.25 Notification of immigration authorities prohibited.

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

18 § 145.30 Transfer of custody to immigration authorities.

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

26 § 145.35 Entry of immigration status into a database.

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

31 § 145.40 Immigration authorities as interpreters prohibited.

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

36 § 145.45 Written consent for interview.

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

47 2. After providing an individual in custody with a written consent
48 form pursuant to subdivision one of this section, an officer shall keep
49 a written record of whether the individual declined an interview,
50 consented to an interview, or asked for an attorney to be present at the
51 interview, and whether an interview occurred. The office or agency
52 employing such officer shall maintain all such written records and shall
53 compile an annual summary identifying the number of requests for inter-
54 views received and whether each individual declined the interview,
55 consented to the interview, or asked for an attorney to be present at
56 the interview, and how many interviews occurred. Such summary shall not

1 include the personally identifiable information of any individual in
2 custody, and shall be a public record.

3 § 145.50 Receipt of information regarding citizenship.

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

8 § 145.55 Compliance with court orders and judicial warrants.

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

14 § 145.60 Application of laws.

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

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

21 § 256-b. Duties of local probation departments regarding immigration
22 enforcement. 1. For the purposes of this section, the terms "immi-
23 gration authorities", "immigration enforcement", "immigration law",
24 "immigration detainer" and "civil immigration warrant" shall have the
25 same meaning as defined in section 1.20 of the criminal procedure law.

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

30 3. No probation agency or department, nor any employee thereof, shall
31 communicate with immigration authorities regarding a person presently or
32 formerly under the supervision of such agency or department or disclose
33 to immigration authorities information gained in the course of employ-
34 ment or available as a result of employment with such agency or depart-
35 ment.

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

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

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

50 7. In any instance in which immigration authorities are permitted
51 access to an individual under the supervision of a probation agency or
52 department for the purpose of being interviewed, the probation agency or
53 department shall provide the individual with a written consent form that
54 explains the purpose of the interview, that the interview is voluntary,
55 and that he or she may decline to be interviewed or may choose to be
56 interviewed with his or her attorney present. The written consent form

1 shall be provided in English, Spanish, and the five most widely spoken
2 languages in the county where the officer's agency or department is
3 located.

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

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

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

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

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

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

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

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

32 ARTICLE 15-AA

33 RESTRICTIONS ON IMMIGRATION ENFORCEMENT BY STATE EMPLOYEES

34 Section 319. Definitions.

35 319-a. Restrictions on immigration enforcement by state employ-
36 ees.

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

39 1. "State entity" means: any agency under the executive authority of
40 the governor; any agency for which the governor appoints the commis-
41 ioner or highest ranking employee; any public benefit corporation, public
42 authority, board, or commission for which the governor appoints the
43 chief executive or a majority of the board members; any division,
44 department, or office regulated under this chapter; the department of
45 education and any public school district or charter school, division,
46 office, or institution under the supervision of the department of educa-
47 tion; all offices defined in article one of the public officers law; the
48 department of civil service or any of its civil divisions as defined in
49 article one of the civil service law; and any contractor while perform-
50 ing services on behalf of the state.

51 2. "State employee" means any individual employed by: any agency under
52 the executive authority of the governor; any agency for which the gover-
53 nor appoints the commissioner or highest ranking employee; any public
54 benefit corporation, public authority, board, or commission for which
55 the governor appoints the chief executive or a majority of the board
56 members; any division, department, or office regulated under this chap-

1 ter; the department of education and any public school district or char-
2 ter school, division, office, or institution under the supervision of
3 the department of education; all offices defined in article one of the
4 public officers law; the department of civil service or any of its civil
5 divisions as defined in article one of the civil service law; or any
6 contractor while performing services on behalf of the state.

7 3. For the purposes of this section, the terms "immigration authori-
8 ties", "immigration enforcement", "immigration law", "immigration
9 detainer" and "civil immigration warrant" shall have the same meaning as
10 defined in section 1.20 of the criminal procedure law.

11 § 319-a. Restrictions on immigration enforcement by state employees.
12 1. No state employee shall use state resources, including but not limit-
13 ed to time spent while on duty or any state property, for immigration
14 enforcement purposes.

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

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

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

28 5. No state entity or state employee shall question, investigate, or
29 interrogate an individual solely on the basis of an immigration detain-
30 er, a civil immigration warrant, or an actual or suspected violation of
31 immigration law.

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

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

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

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

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

1 11. The provisions of this article shall not prohibit state employees
2 from complying with valid court orders or judicial warrants issued by an
3 independent judge appointed pursuant to Article III of the United States
4 constitution or federal magistrate judge appointed pursuant to 28 USC §
5 631.

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

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

12 ARTICLE 19-C

13 DUTIES OF MUNICIPAL CORPORATIONS AND THEIR EMPLOYEES PERTAINING
14 TO IMMIGRATION ENFORCEMENT

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

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

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

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

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

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

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

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

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

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

5 (j) All requests for assistance made by immigration authorities to law
6 enforcement agencies within a municipal corporation and all other commu-
7 nications between law enforcement officers within a municipal corpo-
8 ration and immigration authorities shall be recorded. Each municipal
9 corporation shall issue an annual report listing the number of such
10 requests or communications and stating the content and outcome of each
11 request or communication, which shall be promptly delivered to the
12 office of the attorney general and which shall be a public record.

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

16 (l) The provisions of this article shall not prohibit municipal corpo-
17 rations or their employees from complying with valid court orders or
18 judicial warrants issued by an independent judge appointed pursuant to
19 Article III of the United States constitution or federal magistrate
20 judge appointed pursuant to 28 USC § 631, or from complying with valid
21 writs of habeas corpus ad prosequendum or habeas corpus ad testificandum
22 issued by a state court with the authority to do so pursuant to sections
23 580.30 and 650.30 of the criminal procedure law upon application by a
24 district attorney.

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

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

31 4-a. (a) The chief administrative officer shall not, by formal agree-
32 ment or otherwise, allow any officer or employee of a county correction-
33 al facility to be subject to the direction or supervision of immigration
34 authorities, as defined in section 1.20 of the criminal procedure law.

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

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

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

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

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

51 3. This section shall not be construed to permit any law enforcement
52 officer or agency of this state or its subdivisions to participate in or
53 assist with immigration enforcement, as defined in section 1.20 of the
54 criminal procedure law. All law enforcement officers or agencies
55 furnishing information to agencies of other jurisdictions shall obtain

1 from the recipient agency a certification that such information will not
2 be used for immigration enforcement.

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

5 § 63-e. Immigration status reports and databases. 1. The office of the
6 attorney general shall review all reports provided to it pursuant to
7 article fifteen-AA of this chapter, article nineteen-C of the general
8 municipal law, and article twenty of the correction law and shall
9 prepare an annual summary of such reports, which shall also identify any
10 alleged omissions or discrepancies in the reported information and any
11 information that may indicate a violation of state law. Such summary
12 shall be a public record.

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

23 3. For any databases operated by state and local law enforcement agen-
24 cies, including databases maintained for the agency by private vendors,
25 the attorney general shall, by the first of January following the effec-
26 tive date of this section, in consultation with appropriate stakehold-
27 ers, publish guidance, audit criteria, and training recommendations
28 aimed at ensuring that such databases are governed in a manner that
29 limits the availability of information contained therein, to the fullest
30 extent practicable and consistent with federal and state law, to anyone
31 or any entity for the purpose of immigration enforcement. All state and
32 local law enforcement agencies are encouraged to adopt necessary changes
33 to database governance policies consistent with such guidance.

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