STATE OF NEW YORK

1357

2021-2022 Regular Sessions

IN SENATE

January 11, 2021

Introduced by Sens. SERRANO, BAILEY, BENJAMIN, BIAGGI, COMRIE, GIANARIS, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, PARKER, PERSAUD, RIVERA, SANDERS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the judiciary law, in relation to access to services, law enforcement and counsel in certain immigration related matters; and to amend the judiciary law, in relation to compensation of legal counsel for certain matters

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

Section 1. The executive law is amended by adding a new article 15-AA to read as follows:

ARTICLE 15-AA

ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED MATTERS

Section 319. Definitions.

319-a. Access to services, assistance and eligible benefits.

319-b. Federal agencies to investigate and enforce federal immigration laws.

319-c. Confidentiality of information.

319-d. Custody of certain persons: bail and related pre-trial issues.

319-e. Civil immigration detainers.

319-f. Limitation on use of certain facilities.

319-g. Legal representation.

319-h. Effect on other laws.

§ 319. Definitions. For purposes of this article, the following terms and phrases shall be defined as follows:

1. "Agency" shall mean any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a

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

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governmental or proprietary function for the state or any one or more municipalities thereof.

2. "Agent" shall mean any officer, official, employee or volunteer working for, employed by or providing assistance to an agency.

3. "Civil immigration detainer" shall mean an administrative request issued pursuant to 8 C.F.R. § 287.7 or any similar request issued by an agency or agent of the United States for the detention of a person suspected of violating the immigration law of the United States.

4. "Family or household member" shall mean a family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law.

5. "Federal immigration authority" shall mean any officer, employee or person otherwise paid by or acting as an agent of the United States immigration and customs enforcement or any division thereof or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security or any other federal entity who is charged with enforcement of the provisions of any federal immigration law.

6. "Federal law" shall mean a provision of the Constitution of the United States, or a statute or similar provision approved by the Congress of the United States that has been enacted and taken effect.

7. "Immigration status" or "immigration status information" shall mean immigration status, lawful or unlawful, of an individual under the laws and regulations of the United States of America.

8. "Judicial warrant" shall mean a warrant based on probable cause and issued by a judge serving pursuant to article three of the United States constitution or a federal magistrate judge serving by appointment pursuant to 28 U.S.C. § 631, that authorizes a federal immigration authority to take into custody a person who is the subject of such warrant.

9. "Law enforcement agency" shall mean any agency that is empowered by law to conduct an investigation or make an arrest for a crime or offense, or any agency that is authorized by law to prosecute or participate in the prosecution of a crime or offense, or any agency authorized by law to jail, detain or imprison a person under color of law, or any agency employing a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law or peace officer, as defined in subdivision thirty-three of section 1.20 of the criminal procedure law.

10. "Terrorist screening database" shall mean the United States terrorist watch list database lawfully maintained by the terrorist screening center of the government of the United States.

§ 319-a. Access to services, assistance and eligible benefits. 1. Except where explicitly required by state or federal law for the purpose of verifying eligibility, continued eligibility, or upon recertification, no state or local agency, or agent thereof, may make any inquiry or record any information concerning the immigration status or place of birth of a person who is seeking public assistance and care, as such phrase is defined in subdivision eighteen of section two of the social services law, or seeking any other benefit, assistance or service for himself, herself, or on behalf of a family or household member or any other potential beneficiary. Provided, further, that such information shall not be used or disclosed to any state or federal agency for any purpose other than verifying eligibility, continued eligibility, or upon recertification.

2. Notwithstanding the provisions of subdivision one of this section, limited inquiry of such information concerning the relevant person may

be made when such information is requested for the benefit of the person by the office for new Americans established pursuant to section ninety-four-b of this chapter or any other similar agency that is assisting such person in matters related to such person's immigration status, provided that the status of such person shall not be disclosed for any purpose.

3. In addition to any other right to the assistance of interpretation or translation services, any foreign-born person, or person not proficient in the English language, to whom inquiry is made pursuant to this section shall be entitled to the assistance of a neutral and qualified interpreter or translator, as the case may be, with respect to such inquiry, provided at no cost or expense to such person.

§ 319-b. Federal agencies to investigate and enforce federal immigration laws. 1. No state or local law enforcement agency, or agent thereof, shall stop, question, interrogate, investigate or arrest a person for any of the following:

(a) suspected United States immigration or citizenship status violation;

(b) suspected violation of the United States immigration law or authorized regulations; or

(c) a civil immigration detainer.

2. No state or local law enforcement agency, nor any agent thereof, shall make any inquiry or record any information concerning the immigration status or place of birth of a person who: (a) contacts, approaches or asks for or is in need of assistance of a law enforcement agency or (b) is stopped, questioned, interrogated, investigated or arrested; except where such immigration status or place of birth information is an element of a criminal offense in a specific, ongoing law enforcement investigation engaged in by such state or local law enforcement agency, or agent thereof, or where such inquiry or recording of such information is otherwise authorized by this article.

3. No state or local law enforcement agency, or agent thereof, shall perform the function of or be cross-designated as a federal immigration officer or otherwise engage or significantly assist in the enforcement of federal immigration law, pursuant to 8 U.S.C. § 1357 (g) or any other federal law, regulation or policy. Nothing in this subdivision shall prevent detention of a person in accordance with and to the extent permitted by section three hundred nineteen-e of this article.

4. In addition to any other right to the assistance of interpretation or translation services, any foreign-born person, or person not proficient in the English language, to whom inquiry is made pursuant to subdivision one or two of this section shall be entitled to the assistance of a neutral and qualified interpreter or translator, as the case may be, with respect to such inquiry, provided at no cost or expense to such person.

§ 319-c. Confidentiality of information. Unless disclosure is required by a lawful court order, no state or local agency, or agent thereof, or state or local law enforcement agency, or agent thereof, shall provide to a federal immigration authority any information collected or obtained with respect to a person in accordance with this article or otherwise, including but not limited to home, work or school address, except that:

1. providing immigration status information shall not be prohibited if requested by such federal immigration authority and required to be provided to it in accordance with 8 U.S.C. § 1373 or another federal law;

2. the division of criminal justice services or a qualified agency, as defined in subdivision nine of section eight hundred thirty-five of this chapter, may provide criminal history information, as defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of this chapter, when lawfully requested about a specific person and such disclosure is permitted by state law; and

3. a state or local agency, or agent thereof, or state or local law enforcement agency, or agent thereof, may provide such information, other than the information described in subdivision one of this section, concerning a person, including but not limited to status as a victim of or witness to suspected criminal activity, home address and/or work address, only with informed written consent of the person and, if represented by counsel, written authorization by such attorney.

§ 319-d. Custody of certain persons: bail and related pre-trial issues. 1. Except as provided in section three hundred nineteen-e of this article, no state or local law enforcement agency, or agent thereof, or court shall delay or deny release of a person on recognizance or bail, pursuant to article five hundred thirty of the criminal procedure law or otherwise, on the basis of the person's immigration status, a civil immigration detainer, or a federal immigration authority's request for notification about, transfer of, detention of, or interview or interrogation of such person.

2. Upon receipt from a federal immigration authority of a civil immigration detainer, or a request for transfer, notification, interview, interrogation or other request, a state or local law enforcement agency, or agent thereof, shall promptly notify the person who is the subject of such detainer or request and such person's counsel, provide a copy of such detainer or request, as the case may be, to such person and counsel, inform such person of the right to counsel pursuant to the provisions of section three hundred nineteen-g of this article, and inform such person and counsel, reasonably in advance of responding to the federal immigration authority, as to whether or not such agency intends to comply with such detainer or request.

3. A person in the custody of a state or local law enforcement agency, or agent thereof, shall be subject to booking, processing, right to counsel, release and transfer procedures, policies and practices of that agency that are at least as protective of individual rights as other persons in such agency's custody, regardless of the person's actual or suspected immigration status.

§ 319-e. Civil immigration detainers. 1. A state or local law enforcement agency, or agent thereof, lawfully holding a person in its custody, may thereafter detain such person solely on the basis of a civil immigration detainer, for a single period not exceeding forty-eight hours excluding weekends and holidays, beyond the time when such person would otherwise have been released from such agency's custody, only if:

(a) an authorized federal immigration agency presents such state or local law enforcement agency with a judicial warrant for the detention of the person who is the subject of such civil immigration detainer at the time such civil immigration detainer is presented; or

(b) notice has been received from a court or any other governmental entity, documenting that the person illegally reentered the United States after a previous removal or return as defined in 8 U.S.C. § 1326, and the person stands convicted of a violent felony offense as defined in subdivision one of section 70.02 of the penal law, or a class A felony offense defined in the penal law, or an offense in any other

jurisdiction that has the same essential elements of any such violent felony offense or class A felony offense; or

(c) such person is identified by such state or local law enforcement agency as a likely match with a person listed in the terrorist screening database.

2. Except to the extent that disclosure is required by federal law, no state or local law enforcement agency, or agent thereof, shall provide to a federal immigration authority, or another agency, entity or person on behalf of a federal immigration authority, any information obtained concerning a person who is in or formerly was in the custody of such state or local law enforcement agency, or agent thereof, including but not limited to the person's release date, court appearance date or dates, home, work or school address.

3. Nothing in this section shall be construed to confer any authority on an entity to detain a person based on a civil immigration detainer beyond the authority, if any, to do so that existed prior to the enactment of this section.

§ 319-f. Limitation on use of certain facilities. 1. No state or local law enforcement agency, or agent thereof, shall provide a federal immigration agency, or agent thereof, with access to an individual in such law enforcement agency's custody or control.

2. Notwithstanding the provisions of subdivision one of this section, a person in the custody of a state or local law enforcement agency may request to be interviewed by a federal law enforcement agency or an agent thereof only with knowing and voluntary written consent of the individual and, if represented by counsel, written authorization by such counsel, provided that if such individual is not represented and is entitled to counsel assigned pursuant to section three hundred nineteen-g of this article or article eighteen-B of the county law, he or she shall be notified of such right and provided a reasonable opportunity to obtain such counsel before any such interview.

3. In addition to any other right to the assistance of interpretation or translation services, any foreign-born person, or person not proficient in the English language, to whom inquiry is made pursuant to this section shall be entitled to the assistance of a neutral and qualified interpreter or translator, as the case may be, with respect to such inquiry, provided at no cost or expense to such person.

4. Except as provided in subdivision two of this section, federal immigration authorities shall not be permitted to use or maintain, for the purpose of interviewing any person or witness or investigating or adjudicating any alleged violation of federal immigration law, any office or quarters in any building or facility or any land owned, leased or operated by a state or local law enforcement agency; provided, however that the federal Executive Office for Immigration Review, pursuant to an otherwise lawful agreement with the state department of corrections and community supervision, may make use of offices in one or more buildings or facilities operated as state correctional facilities in this state for the purpose of conducting adjudicatory hearings involving alleged violation of federal immigration law.

§ 319-g. Legal representation. 1. A person unable to afford counsel against whom a removal proceeding may be or has been commenced, shall be entitled to representation by assigned counsel and related assistance, pursuant to subdivision one of section thirty-five of the judiciary law, when the person:

(a) was present in this state when questioned, taken into custody, charged, summoned or presented with the allegations of the removal

proceedings, and the person resides or is detained in either this state or an adjoining state; or

(b) resided in this state when questioned, taken into custody, charged, summoned or presented with the allegations of the removal proceedings, and the person continues to reside in this state or an adjoining state, or if detained, continues to be detained in either this state or an adjoining state.

2. Representation and related assistance provided in accordance with subdivision one of this section shall be a state charge, pursuant to subdivision one of section thirty-five of the judiciary law.

§ 319-h. Effect on other laws. This article shall supersede conflicting local laws, rules, policies, procedures and practices, except to the extent that the provisions of any such local law, rule, policy or any such procedure or practice may provide any additional or greater right or protection. Nothing in this article shall prohibit any entity from cooperating with a federal immigration authority to the extent required by federal law. Nothing in this article shall be interpreted or applied so as to create any power, duty or obligation in conflict with federal law.

§ 2. The opening paragraph of paragraph a of subdivision 1 of section 35 of the judiciary law is designated as subparagraph (i) and a new subparagraph (ii) is added to read as follows:

(ii) Persons providing assigned counsel and related assistance in immigration-related matters pursuant to section three hundred nineteen-g of the executive law shall be compensated in accordance with this section. In any case where a person entitled to assigned representation pursuant to section three hundred nineteen-g of the executive law petitions the criminal court of the city of New York, the county court or district court, with jurisdiction where the person is to be questioned or detained, or is detained, or was charged in such immigration-related matter, or most recently resided, the court shall assign counsel, with appropriate expertise and experience in immigration-related matters, in accordance with this section.

§ 3. Severability. If any clause, sentence, subdivision, paragraph, section or other part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4. This act shall take effect immediately.