

STATE OF NEW YORK

3076--A

2021-2022 Regular Sessions

IN SENATE

January 27, 2021

Introduced by Sens. SALAZAR, BENJAMIN, BRISPORT, BROUK, COONEY, GIANARIS, GOUNARDES, HOYLMAN, JACKSON, KRUEGER, LIU, MYRIE, RAMOS, RIVERA, SANDERS, SEPULVEDA, 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

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.

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

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

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

8 ARTICLE 145

9 PROCEDURES FOR POLICE OFFICERS, PEACE OFFICERS, AND SCHOOL RESOURCE
10 OFFICERS PERTAINING TO IMMIGRATION ENFORCEMENT
11 Section 145.05 Duties of police officers, peace officers, and school
12 resource officers; immigration.

13 145.10 Direction by immigration authorities.

14 145.15 Immigration detainer; questioning, investigation or
15 interrogation prohibited.

16 145.20 Inquiry into and collection of information about citi-
17 zenship or immigration status prohibited.

18 145.25 Notification of immigration authorities prohibited.

19 145.30 Transfer of custody to immigration authorities.

20 145.35 Entry of immigration status into a database.

21 145.40 Immigration authorities as interpreters prohibited.

22 145.45 Written consent for interview.

23 145.50 Receipt of information regarding citizenship.

24 145.55 Compliance with court orders and judicial warrants.

25 145.60 Application of laws.

26 § 145.05 Duties of police officers, peace officers, and school resource
27 officers; immigration.

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

33 § 145.10 Direction by immigration authorities.

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

39 § 145.15 Immigration detainer; questioning, investigation or interro-
40 gation prohibited.

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

45 § 145.20 Inquiry into and collection of information about citizenship or
46 immigration status prohibited.

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

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

55 § 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.

1 The provisions of this article shall not prohibit officers from
2 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 § 145.60 Application of laws.

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

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

13 § 256-b. Duties of local probation departments regarding immigration
14 enforcement. 1. For the purposes of this section, the terms "immi-
15 gration authorities", "immigration enforcement", "immigration law",
16 "immigration detainer" and "civil immigration warrant" shall have the
17 same meaning as defined in section 1.20 of the criminal procedure law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ARTICLE 15-AA

26 RESTRICTIONS ON IMMIGRATION ENFORCEMENT BY STATE EMPLOYEES

27 Section 319. Definitions.

28 319-a. Restrictions on immigration enforcement by state employ- 29 ees.

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

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

44 2. "State employee" means any individual employed by: any agency under
45 the executive authority of the governor; any agency for which the gover-
46 nor appoints the commissioner or highest ranking employee; any public
47 benefit corporation, public authority, board, or commission for which
48 the governor appoints the chief executive or a majority of the board
49 members; any division, department, or office regulated under this chap-
50 ter; the department of education and any public school district or char-
51 ter school, division, office, or institution under the supervision of
52 the department of education; all offices defined in article one of the
53 public officers law; the department of civil service or any of its civil
54 divisions as defined in article one of the civil service law; or any
55 contractor while performing services on behalf of the state.

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

5 § 319-a. Restrictions on immigration enforcement by state employees.

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

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

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

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

22 5. No state entity or state employee shall question, investigate, or
23 interrogate an individual solely on the basis of an immigration detain-
24 er, a civil immigration warrant, or an actual or suspected violation of
25 immigration law.

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

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

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

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

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

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

55 12. 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 employees to participate in immi-
2 gration enforcement.

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

5 ARTICLE 19-C

6 DUTIES OF MUNICIPAL CORPORATIONS AND THEIR EMPLOYEES PERTAINING
7 TO IMMIGRATION ENFORCEMENT

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

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

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

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

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

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

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

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

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

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

53 (j) All requests for assistance made by immigration authorities to law
54 enforcement agencies within a municipal corporation and all other commu-
55 nications between law enforcement officers within a municipal corpo-
56 ration and immigration authorities shall be recorded. Each municipal

1 corporation shall issue an annual report listing the number of such
2 requests or communications and stating the content and outcome of each
3 request or communication, which shall be promptly delivered to the
4 office of the attorney general and which shall be a public record.

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

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

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

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

19 4-a. (a) The chief administrative officer shall not, by formal agree-
20 ment or otherwise, allow any officer or employee of a county correction-
21 al facility to be subject to the direction or supervision of immigration
22 authorities, as defined in section 1.20 of the criminal procedure law.

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

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

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

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

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

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

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

48 § 63-e. Immigration status reports and databases. 1. The office of the
49 attorney general shall review all reports provided to it pursuant to
50 article fifteen-AA of this chapter, article nineteen-C of the general
51 municipal law, and article twenty of the correction law and shall
52 prepare an annual summary of such reports, which shall also identify any
53 alleged omissions or discrepancies in the reported information and any
54 information that may indicate a violation of state law. Such summary
55 shall be a public record.

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

11 3. For any databases operated by state and local law enforcement agen-
12 cies, including databases maintained for the agency by private vendors,
13 the attorney general shall, by January first, two thousand twenty-two in
14 consultation with appropriate stakeholders, publish guidance, audit
15 criteria, and training recommendations aimed at ensuring that such data-
16 bases are governed in a manner that limits the availability of informa-
17 tion contained therein, to the fullest extent practicable and consistent
18 with federal and state law, to anyone or any entity for the purpose of
19 immigration enforcement. All state and local law enforcement agencies
20 are encouraged to adopt necessary changes to database governance poli-
21 cies consistent with such guidance.

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