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Introduced by Sens. SERRANO, BAILEY, 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:

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

3 ARTICLE 15-AA

4 ACCESS TO SERVICES AND LAW ENFORCEMENT IN CERTAIN IMMIGRATION RELATED
5 MATTERS

6 Section 319. Definitions.

7 319-a. Access to services, assistance and eligible benefits.

8 319-b. Federal agencies to investigate and enforce federal
9 immigration laws.

10 319-c. Confidentiality of information.

11 319-d. Custody of certain persons: bail and related pre-trial
12 issues.

13 319-e. Civil immigration detainers.

14 319-f. Limitation on use of certain facilities.

15 319-g. Legal representation.

16 319-h. Effect on other laws.

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

19 1. "Agency" shall mean any state or municipal department, board,
20 bureau, division, commission, committee, public authority, public corpo-

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

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1 ration, council, office or other governmental entity performing a
2 governmental or proprietary function for the state or any one or more
3 municipalities thereof.

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

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

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

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

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

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

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

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

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

43 § 319-a. Access to services, assistance and eligible benefits. 1.
44 Except where explicitly required by state or federal law for the purpose
45 of verifying eligibility, continued eligibility, or upon recertif-
46 ication, no state or local agency, or agent thereof, may make any
47 inquiry or record any information concerning the immigration status or
48 place of birth of a person who is seeking public assistance and care, as
49 such phrase is defined in subdivision eighteen of section two of the
50 social services law, or seeking any other benefit, assistance or service
51 for himself, herself, or on behalf of a family or household member or
52 any other potential beneficiary. Provided, further, that such informa-
53 tion shall not be used or disclosed to any state or federal agency for
54 any purpose other than verifying eligibility, continued eligibility, or
55 upon recertification.

1 2. Notwithstanding the provisions of subdivision one of this section,
2 limited inquiry of such information concerning the relevant person may
3 be made when such information is requested for the benefit of the person
4 by the office for new Americans established pursuant to section ninety-
5 four-b of this chapter or any other similar agency that is assisting
6 such person in matters related to such person's immigration status,
7 provided that the status of such person shall not be disclosed for any
8 purpose.

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

15 § 319-b. Federal agencies to investigate and enforce federal immi-
16 gration laws. 1. No state or local law enforcement agency, or agent
17 thereof, shall stop, question, interrogate, investigate or arrest a
18 person for any of the following:

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

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

23 (c) a civil immigration detainer.

24 2. No state or local law enforcement agency, nor any agent thereof,
25 shall make any inquiry or record any information concerning the immi-
26 gration status or place of birth of a person who: (a) contacts,
27 approaches or asks for or is in need of assistance of a law enforcement
28 agency or (b) is stopped, questioned, interrogated, investigated or
29 arrested; except where such immigration status or place of birth infor-
30 mation is an element of a criminal offense in a specific, ongoing law
31 enforcement investigation engaged in by such state or local law enforce-
32 ment agency, or agent thereof, or where such inquiry or recording of
33 such information is otherwise authorized by this article.

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

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

48 § 319-c. Confidentiality of information. Unless disclosure is required
49 by a lawful court order, no state or local agency, or agent thereof, or
50 state or local law enforcement agency, or agent thereof, shall provide
51 to a federal immigration authority any information collected or obtained
52 with respect to a person in accordance with this article or otherwise,
53 including but not limited to home, work or school address, except that:

54 1. providing immigration status information shall not be prohibited if
55 requested by such federal immigration authority and required to be

1 provided to it in accordance with 8 U.S.C. § 1373 or another federal
2 law;

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

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

16 § 319-d. Custody of certain persons: bail and related pre-trial
17 issues. 1. Except as provided in section three hundred nineteen-e of
18 this article, no state or local law enforcement agency, or agent there-
19 of, or court shall delay or deny release of a person on recognizance or
20 bail, pursuant to article five hundred thirty of the criminal procedure
21 law or otherwise, on the basis of the person's immigration status, a
22 civil immigration detainer, or a federal immigration authority's request
23 for notification about, transfer of, detention of, or interview or
24 interrogation of such person.

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

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

42 § 319-e. Civil immigration detainers. 1. A state or local law enforce-
43 ment agency, or agent thereof, lawfully holding a person in its custody,
44 may thereafter detain such person solely on the basis of a civil immi-
45 gration detainer, for a single period not exceeding forty-eight hours
46 excluding weekends and holidays, beyond the time when such person would
47 otherwise have been released from such agency's custody, only if:

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

52 (b) notice has been received from a court or any other governmental
53 entity, documenting that the person illegally reentered the United
54 States after a previous removal or return as defined in 8 U.S.C. §
55 1326, and the person stands convicted of a violent felony offense as
56 defined in subdivision one of section 70.02 of the penal law, or a class

1 A felony offense defined in the penal law, or an offense in any other
2 jurisdiction that has the same essential elements of any such violent
3 felony offense or class A felony offense; or

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

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

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

19 § 319-f. Limitation on use of certain facilities. 1. No state or local
20 law enforcement agency, or agent thereof, shall provide a federal immi-
21 gration agency, or agent thereof, with access to an individual in such
22 law enforcement agency's custody or control.

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

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

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

51 § 319-g. Legal representation. 1. A person unable to afford counsel
52 against whom a removal proceeding may be or has been commenced, shall be
53 entitled to representation by assigned counsel and related assistance,
54 pursuant to subdivision one of section thirty-five of the judiciary law,
55 when the person:

1 (a) was present in this state when questioned, taken into custody,
2 charged, summoned or presented with the allegations of the removal
3 proceedings, and the person resides or is detained in either this state
4 or an adjoining state; or

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

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

13 § 319-h. Effect on other laws. This article shall supersede conflict-
14 ing local laws, rules, policies, procedures and practices, except to the
15 extent that the provisions of any such local law, rule, policy or any
16 such procedure or practice may provide any additional or greater right
17 or protection. Nothing in this article shall prohibit any entity from
18 cooperating with a federal immigration authority to the extent required
19 by federal law. Nothing in this article shall be interpreted or applied
20 so as to create any power, duty or obligation in conflict with federal
21 law.

22 § 2. The opening paragraph of paragraph a of subdivision 1 of section
23 35 of the judiciary law is designated as subparagraph (i) and a new
24 subparagraph (ii) is added to read as follows:

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

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

43 § 4. This act shall take effect immediately.