

**A11013 Summary:**

BILL NO        A11013A

SAME AS        SAME AS

SPONSOR        Rules (Solages)

COSPNR        Crespo, Kim, Niou, Barron, Davila, De La Rosa, Dickens, Epstein, Espinal, Fernandez, Hevesi, Hyndman, Jaffee, Jean-Pierre, Lentol, Mosley, O'Donnell, Pichardo, Pretlow, Ramos, Rozic, Seawright, Weprin, Williams, Wright, Lavine, Gottfried, D'Urso, Perry, Joyner, Ortiz, Fahy, Simon, Buchwald, Lifton, Arroyo, Glick, Rosenthal L, Taylor, Bichotte, Peoples-Stokes, Cahill, Cook, Rivera, McDonald, Otis, Paulin

MLTSPNSR

Add §28, Civ Rts L; add §4-a, amd §212, Judy L

Exempts certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding.

**A11013 Memo:**

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)

**BILL NUMBER:** A11013A

**SPONSOR:** Rules (Solages)

**TITLE OF BILL:** An act to amend the civil rights law and the judiciary law, in relation to protecting certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding

**PURPOSE OR GENERAL IDEA OF BILL:**

The purpose of this bill is to facilitate continued access to the justice system and courts by all members of the community without fear of immigration-related consequences.

**SUMMARY OF PROVISIONS:**

Section one is the title of the bill.

Section two would amend the Civil Rights Law to protect certain persons from civil arrest when going to, remaining at, or returning from a court appearance or proceeding unless a specific judicial warrant or judicial order authorizing such arrest has been issued. This section provides that a civil court action may be brought by the individual or the attorney general to address an alleged violation of this provision. This provision is in addition to the general protections from civil arrest found in Article Three of the Civil Rights Law, in any other law, and available under common law.

Section three would amend the Judiciary Law to allow courts to issue orders designed to protect the prohibition on such civil arrests.

Section four would amend the Judiciary Law to provide that non-local law enforcement officials seeking to enter a courthouse with respect to an alleged violation or violations of federal immigration law would be required to identify themselves and such purpose. Counsel for the unified court system would be required to review any judicial warrant or judicial order presented to assure its authenticity before allowing entry of the officer intending to effect such an immigration-related arrest.

Section five contains a severability clause.

Section six is the effective date.

**DIFFERENCE BETWEEN ORIGINAL AND AMENDED VERSION (IF APPLICABLE):**

The amended version adds a title. 1

**JUSTIFICATION:**

Article Three of the Civil Rights Law, "Privilege From Arrest," dates back to the early part of the last century. Most of these provisions of the Civil Rights Law were enacted in 1909 (e.g., § 22 ("Privileges of officers and prisoners from arrest while passing through another county"); § 23 ("No person to be arrested in civil proceedings without statutory provision"); § 25 ("Witness exempt from arrest")). While such provisions have been effective to protect the integrity and needs of the court system in certain circumstances, certain modern practices make an updated, supplementary statute necessary. Changes by federal agencies regarding the enforcement of federal immigration law have instilled significant fear in immigrant communities across New York State. In particular, the use of court calendars and courthouses as a means of locating allegedly undocumented individuals has soared, leaving many immigrants, documented and undocumented, afraid to access the justice system or respond to court summonses for fear of potentially life-changing immigration-related repercussions. This trend has a potentially damaging impact on all New Yorkers, not just immigrant communities, as the operation of our judicial system and public safety are undermined.

Domestic violence victims - whether documented individuals or not - need access to our civil justice system, for orders of protection and similar relief. An entire family may be gravely impacted if a tenant is afraid to enter the courthouse and respond to a landlord's court petition. Justice to other persons is denied when an immigrant - documented or not - refuses to come to court to testify as a victim or witness. It serves neither justice nor public safety when fear of a civil arrest deters a defendant charged with a traffic infraction, or a more serious crime, from attending a scheduled court appearance in the case.

According to the Immigrant Defense Project, from 2016 to 2017, arrests by federal Immigration and Customs Enforcement ("ICE") agents at courthouses in New York State increased by 1200%. Fear of being targeted, either due to a lack of legal immigration status or concern about the uncertain status of a family member, have dissuaded many individuals from contacting law enforcement or following through with court proceedings. District attorneys and legal representatives, in New York and elsewhere, have expressed frustration and concern regarding their ability to prosecute cases, as victims and witnesses are sometimes too afraid to attend the proceedings. This inability of law enforcement and the legal community to work effectively with immigrant communities and individuals has potentially severe consequences for public safety, as the justice system is handicapped by the unwillingness of victims, witnesses, tenants and others to come forward and enter the courthouse.

As fewer individuals feel safe interacting with the justice system, fearing potential implications for themselves, friends or family, it becomes all the more challenging to promote public safety. It is imperative that we ensure that all members of our community feel safe accessing New York's court system.

This bill would make a modest change to clarify and update New York's century-old prohibition on certain courthouse arrests (Civil Rights Law Art. 3). The bill would allow arrest for an immigration offense based on a judicial arrest warrant or judicial order, signed by a judge of another jurisdiction who is authorized to order such arrest. However, an immigration-related courthouse arrest based on an administrative warrant, or without a warrant, would not be permitted.

#### PRIOR LEGISLATIVE HISTORY:

New bill.

#### FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None expected.

#### EFFECTIVE DATE:

This bill would take effect immediately.

# STATE OF NEW YORK

11013--A

## IN ASSEMBLY

May 30, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Solages, Crespo, Kim, Niou, Barron, Davila, De La Rosa, Dickens, Epstein, Espinal, Fernandez, Hevesi, Hyndman, Jaffee, Jean-Pierre, Lentol, Mosley, O'Donnell, Pichardo, Pretlow, Ramos, Rozic, Seawright, Weprin, Williams, Wright, Lavine, Gottfried) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law and the judiciary law, in relation to protecting certain interested parties or people from civil arrest while going to, remaining at, or returning from the place of such court proceeding

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

- 1 Section 1. This act shall be known and may be cited as the "protect
- 2 our courts act".
- 3 § 2. The civil rights law is amended by adding a new section 28 to
- 4 read as follows:
- 5 § 28. Civil arrest; certain locations. 1. A person duly and in good
- 6 faith attending a court proceeding in which such person is a party or
- 7 potential witness, or a family or household member is a party or poten-
- 8 tial witness, is privileged from civil arrest while going to, remaining
- 9 at, and returning from, the place of such court proceeding, unless such
- 10 civil arrest is supported by a judicial warrant or judicial order
- 11 authorizing such civil arrest.
- 12 2. It is a contempt of the court and false imprisonment for any person
- 13 to willfully violate subdivision one of this section, or an order of the
- 14 court issued pursuant to section four-a of the judiciary law, by execut-
- 15 ing an arrest prohibited by subdivision one of this section or section
- 16 four-a of the judiciary law, or willfully assisting or willfully facili-
- 17 tating an arrest prohibited by subdivision one of this section or
- 18 section four-a of the judiciary law; provided, however, that nothing in
- 19 this subdivision shall affect any right or defense of any person, police
- 20 officer, peace officer or public officer pursuant to article thirty-five
- 21 of the penal law.
- 22 3. Regardless of whether a proceeding for contempt of the court pursu-
- 23 ant to subdivision two of this section has been initiated:

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

LBD15571-05-8

1 (a) a person described in subdivision one of this section may bring a  
2 civil action for appropriate equitable and declaratory relief if such  
3 person has reasonable cause to believe a violation of subdivision one of  
4 this section, as described in subdivision two of this section, or a  
5 violation of section four-a of the judiciary law, has occurred or may  
6 occur; and

7 (b) the attorney general may bring a civil action in the name of the  
8 people of the state of New York to obtain appropriate equitable and  
9 declaratory relief if the attorney general has reasonable cause to  
10 believe that a violation of subdivision one of this section, as  
11 described in subdivision two of this section, or a violation of section  
12 four-a of the judiciary law, has occurred or may occur.

13 4. In any successful action pursuant to subdivision three of this  
14 section, a plaintiff or petitioner may recover costs and reasonable  
15 attorney's fees.

16 5. Nothing in this section shall be construed to narrow, or in any way  
17 lessen, any common law or other right or privilege of a person privi-  
18 leged from arrest pursuant to this article or otherwise.

19 6. As used in this section:

20 (a) "civil arrest" shall mean an arrest that is not:

21 (i) for the sole or primary purpose of preparing the person subject to  
22 such arrest for criminal prosecution, for an alleged violation of the  
23 criminal law of:

24 (A) this state, or another state, for which a sentence of a term of  
25 imprisonment is authorized by law; or

26 (B) the United States, for which a sentence of a term of imprisonment  
27 is authorized by law, and for which federal law requires an initial  
28 appearance before a federal judge, federal magistrate or other judicial  
29 officer, pursuant to the federal rules of criminal procedure that govern  
30 initial appearances; or

31 (ii) for contempt of the court in which the court proceeding is taking  
32 place or will be taking place;

33 (b) "court proceeding" shall mean any appearance in a court of this  
34 state before a judge or justice or judicial magistrate of this state  
35 ordered or scheduled by such judge or justice or judicial magistrate, or  
36 the filing of papers designed to initiate such an appearance before a  
37 judge or justice or judicial magistrate of this state;

38 (c) "family or household member" shall have the same meaning as in  
39 subdivision two of section four hundred fifty-nine-a of the social  
40 services law; and

41 (d) "judicial warrant or judicial order authorizing such civil arrest"  
42 means an arrest warrant or other judicial order, issued by a magistrate  
43 sitting in the judicial branch of a local or state government or of the  
44 federal government, authorizing a civil arrest and issued by the court  
45 in which proceedings following such arrest will be heard and determined.

46 § 3. The judiciary law is amended by adding a new section 4-a to read  
47 as follows:

48 § 4-a. Certain powers of the courts regarding civil arrests. In order  
49 to maintain access to the court and open judicial proceedings for all  
50 persons in their individual capacity and to prevent interference with  
51 the needs of judicial administration, a court has the power to issue  
52 appropriate judicial orders to protect the privilege from civil arrest,  
53 in accordance with article three of the civil rights law.

54 § 4. Subdivision 2 of section 212 of the judiciary law is amended by  
55 adding a new paragraph (w) to read as follows:

1 (w) (i) In order to maintain access to the court and open judicial  
2 proceedings for all persons in their individual capacity and to prevent  
3 interference with the needs of judicial administration, consistent with  
4 section twenty-eight of the civil rights law and section four-a of this  
5 chapter, direct that court personnel responsible for all courthouses and  
6 the places of all court proceedings in the state shall not allow access  
7 to such courthouses and places of court proceedings to non-local law  
8 enforcement personnel seeking to enter such locations with respect to  
9 violation or violations of federal immigration law unless presented with  
10 a valid judicial warrant or judicial order, and designated counsel of  
11 the unified court system has individually reviewed and confirmed in  
12 writing the authenticity of such judicial warrant or judicial order.  
13 Non-local law enforcement personnel seeking to enter such a location  
14 with respect to violation or violations of federal immigration law shall  
15 identify themselves and such purpose, and present such judicial warrant  
16 or judicial order to such responsible court personnel when seeking such  
17 access. The chief administrator shall promulgate rules consistent with  
18 this subdivision designed to implement the provisions of this paragraph.

19 (ii) Such rules shall also require that a copy of each judicial  
20 warrant and judicial order reviewed by designated counsel of the  
21 unified court system under this paragraph be sent to and maintained in a  
22 central repository by the chief administrator, who shall on an annual  
23 basis compile statistics disaggregated by county and prepare a report  
24 of such statistics, and also identify in such report, for each such  
25 judicial warrant and judicial order, the date such judicial warrant or  
26 judicial order was signed, the judge and court which issued such judi-  
27 cial warrant or judicial order and the location of such court as shown  
28 by such document, the date such judicial warrant or judicial order was  
29 presented to counsel for the unified court system, a description of the  
30 type of judicial warrant or judicial order and, to the extent known to  
31 court personnel, whether or not an arrest occurred and the date and  
32 location of such arrest. Such report, which shall not include the names  
33 of individuals involved, shall be published on the website of the  
34 unified court system and copies of such report shall be sent to the  
35 governor, the speaker of the assembly and the temporary president of the  
36 senate.

37 (iii) For purposes of this paragraph, "non-local law enforcement  
38 personnel" shall mean a person or persons employed or retained by a law  
39 enforcement agency: (A) of a jurisdiction other than the state of New  
40 York or a local government in the state of New York; or (B) of the state  
41 of New York or a local government in the state of New York, where such  
42 law enforcement agency or employee or agent thereof has entered into an  
43 agreement with a federal law enforcement agency, including but not  
44 limited to pursuant to 8 U.S.C. 1373, authorizing it or such person to  
45 enforce or assist in the enforcement of federal immigration law.

46 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-  
47 sion, section or part of this act shall be adjudged by any court of  
48 competent jurisdiction to be invalid, such judgment shall not affect,  
49 impair, or invalidate the remainder thereof, but shall be confined in  
50 its operation to the clause, sentence, paragraph, subdivision, section  
51 or part thereof directly involved in the controversy in which such judg-  
52 ment shall have been rendered. It is hereby declared to be the intent of  
53 the legislature that this act would have been enacted even if such  
54 invalid provisions had not been included herein.

55 § 6. This act shall take effect immediately.