

STATE OF NEW YORK

425--A

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. HOYLMAN, BENJAMIN, BIAGGI, COMRIE, GIANARIS, GOUNARDES, JACKSON, KAPLAN, KAVANAGH, KRUEGER, LIU, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- 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 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 an arrest prohibited
17 by subdivision one of this section or section four-a of the judiciary

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

LBD05356-08-9

1 law; provided, however, that nothing in this subdivision shall affect
2 any right or defense of any person, police officer, peace officer or
3 public officer pursuant to article thirty-five of the penal law, or any
4 unified court system personnel acting lawfully pursuant to their duty to
5 maintain safety and order in the courts.

6 3. Regardless of whether a proceeding for contempt of the court pursu-
7 ant to subdivision two of this section has been initiated:

8 (a) a person described in subdivision one of this section may bring a
9 civil action for appropriate equitable and declaratory relief if such
10 person has reasonable cause to believe a violation of subdivision one of
11 this section, as described in subdivision two of this section, or a
12 violation of section four-a of the judiciary law, has occurred or may
13 occur; and

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

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

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

26 6. As used in this section:

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

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

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

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

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

40 (b) "court proceeding" shall mean any appearance in a court of this
41 state before a judge or justice or judicial magistrate of this state
42 ordered or scheduled by such judge or justice or judicial magistrate, or
43 the filing of papers designed to initiate such an appearance before a
44 judge or justice or judicial magistrate of this state;

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

48 (d) "judicial warrant or judicial order authorizing such civil arrest"
49 means an arrest warrant or other judicial order, issued by a magistrate
50 sitting in the judicial branch of a local or state government or of the
51 federal government, authorizing a civil arrest and issued by the court
52 in which proceedings following such arrest will be heard and determined.

53 7. No action or proceeding may be commenced pursuant to this section
54 against the unified court system or any unified court system personnel
55 acting lawfully pursuant to their duty to maintain safety and order in
56 the courts.

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

3 § 4-a. Certain powers of the courts regarding civil arrests. In order
4 to maintain access to the court and open judicial proceedings for all
5 persons in their individual capacity and to prevent interference with
6 the needs of judicial administration, a court has the power to issue
7 appropriate judicial orders to protect the privilege from civil arrest,
8 in accordance with article three of the civil rights law.

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

11 (aa) (i) In order to maintain access to the court and open judicial
12 proceedings for all persons in their individual capacity and to prevent
13 interference with the needs of judicial administration, consistent with
14 section twenty-eight of the civil rights law and section four-a of this
15 chapter, shall promulgate rules to ensure the following:

16 (A) any representative of a law enforcement agency who, while acting
17 in an official capacity, enters a New York state courthouse intending to
18 observe an individual or take an individual into custody shall identify
19 himself or herself to uniformed court personnel and state his or her
20 specific law enforcement purpose and the proposed enforcement action to
21 be taken; any such representative who has a warrant or order concerning
22 such intended arrest shall provide a copy of such warrant or order to
23 such court personnel;

24 (B) any such warrant or order concerning such intended enforcement
25 action shall be promptly reviewed by a judge or court attorney;

26 (C) information about any such proposed enforcement action shall be
27 transmitted to and reviewed by appropriate court system personnel,
28 including the judge presiding over any case involving the subject of
29 that enforcement action;

30 (D) except in extraordinary circumstances, no arrest may be made by a
31 representative of a law enforcement agency in a courtroom absent leave
32 of the court;

33 (E) no civil arrest shall be executed inside a New York state court-
34 house except pursuant to a judicial warrant or judicial order authoriz-
35 ing the arrest;

36 (F) an unusual occurrence report shall be filed by court system
37 personnel for every enforcement action taken inside the courthouse,
38 including the observation of court proceedings by a representative of a
39 law enforcement agency acting in such person's official capacity; and

40 (G) copies of all judicial warrants and judicial orders authorizing an
41 arrest and provided to court personnel pursuant to this paragraph and
42 the rules promulgated thereunder shall be maintained by the chief admin-
43 istrator in a central record repository, appropriately indexed or filed
44 alphabetically by name.

45 (ii) The chief administrator shall publish on the unified court system
46 website and provide to the governor, the speaker of the assembly and the
47 temporary president of the senate an annual report compiling statistics,
48 aggregated by county, setting forth the date each such judicial warrant
49 or judicial order was signed, the judge and court which issued such
50 judicial warrant or judicial order and the location of such court as
51 shown by such document, the date such judicial warrant or judicial order
52 was presented to counsel for the unified court system, a description of
53 the type of judicial warrant or judicial order and, to the extent known
54 to court personnel, whether or not an arrest occurred with respect to
55 such warrant and the date and specific location of such arrest.

1 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-
2 sion, section or part of this act shall be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall not affect,
4 impair, or invalidate the remainder thereof, but shall be confined in
5 its operation to the clause, sentence, paragraph, subdivision, section
6 or part thereof directly involved in the controversy in which such judg-
7 ment shall have been rendered. It is hereby declared to be the intent of
8 the legislature that this act would have been enacted even if such
9 invalid provisions had not been included herein.

10 § 6. This act shall take effect immediately.



The Protect Our Courts Act is Now Law in New York State!

Community FAQ

What is the Protect Our Courts Act?

The Protect Our Courts Act, also known as **POCA**, is a new law in New York State that keeps Immigration and Customs Enforcement (ICE) officers from making civil arrests in and around New York State Courts, including City and other Municipal Courts.

What problem does it solve?

Over the past decade, ICE has strengthened its ties to local police and prison systems. This trend is clear in New York State, where ICE has escalated its community raids, including arrests and surveillance at courthouses. Through our hotline, the **Immigrant Defense Project (IDP)** has been receiving troubling reports of ICE making courthouse arrests, [noting a 1700% increase in arrests](#) and attempted arrests between 2017 and 2018.

This practice not only led to cruel and troubling stories of ICE creating courthouse traps that led to people getting arrested at courthouses, but also created fear within immigrant communities where many people ended up avoiding going to courts for various reasons.

In response, IDP and partners drafted the [Protect Our Courts Act \(POCA\)](#), a piece of legislation that makes sure that **everyone in New York has equal access to our state courthouses**.

How did POCA become a state law?

The #ICEOutOfCourts Coalition was born in 2017 and through coalition efforts led by IDP, POCA was introduced in the NYS legislature. POCA finally passed in July 2020 with overwhelming and bipartisan support, and in December 2020 Governor Cuomo signed it into law!

How are people now protected?

In New York State, ICE can no longer arrest people at state, city and municipal courthouses, and they can no longer arrest people going to or leaving from state, city and municipal courthouses without judicial warrants.

What's a judicial warrant?

A judicial warrant is a warrant signed by a judge. ICE typically doesn't have a signed judicial warrant. They typically do have administrative warrants, which are warrants signed by their own supervisors. However, without a judicial warrant, ICE cannot arrest people at courts, or people going to or leaving courts.

Can ICE arrest me at a courthouse from now on?

No. Now without a judicial warrant, ICE cannot arrest anyone at any state, city or other municipal courts.

Can ICE use courthouses as surveillance from now on?

ICE officers now have to identify themselves to court personnel if they come to a courthouse. They also have to state their reason for being at the courthouse, including if they are there to surveil, observe, or arrest a particular person. Court personnel are also required to communicate ICE's intent to surveil, observe, or arrest someone to the judge. However, ICE can still surveil people outside of the courthouse building, even though they cannot make an arrest without a judicial warrant.

Are all the courthouses included under POCA?

No, federal courts, including immigration courts are not included in the protections offered by POCA. However, state, city and other municipal courts are protected under POCA. These can include, criminal courts, family courts, and traffic courts, to name a few.¹

Can I be arrested by ICE going to or leaving court?

POCA protects people going to and leaving state, city and municipal courts.

How can I prove I was on my way to court or leaving court?

Usually courts have records of people attending court for various reasons. It is always good to keep documents from court that list your court date, such as an appointment notice. If an ICE agent stops you on your way to or from court, stay silent, do not say your name or anything else, and ask, am I free to go? You can also tell the agent "I am going to attend (or I am leaving) court" but do not provide other information about your court appearance and remain silent.

Check out IDP's [Know Your Rights resources](#) for more information on what to do if ICE approaches you on the street.

What happens if ICE arrests me or tries to arrest me at court from now on? Or if I am going to or leaving court?

The New York State Attorney General is authorized to bring legal action if the Protect Our Courts Act is violated. You can consult a lawyer about your options if ICE violates your rights under POCA. You can contact your local public defender office, or if you are in removal proceedings, consult with an attorney about challenging the removal proceedings based on the violation of your rights.

¹ Some courts included in the protections of the Protect Our Courts Act are: the New York Supreme Court, Appellate Division; Supreme Court, County Court, Family Court, Surrogate's Court, Court of Claims, NYC Criminal Court, NYC Civil Court, District Court (Nassau and Suffolk Counties), Justice Court (including "Town Court" and "Village Court"), Traffic Violations Bureau, NYC Office of Administrative Trials and Hearings (OATH), such as the Taxi and Limousine Tribunal.

PROTECT OUR COURTS ACT

Ensuring that ALL New Yorkers can access our courts without fear of being arrested by ICE.

ENDORSEMENTS FROM NEW YORK PROSECUTORS

Westchester DA Anthony A. Scarpino, Jr.

“The growing presence of Immigration and Customs Enforcement (ICE) agents in Westchester courts undermines our efforts to effectively investigate and prosecute crimes. When ICE uses our local courthouses to make civil immigration arrests, both immigrants who are victims of or witnesses to domestic violence, scams, wage theft or violent crimes are now fearful that coming to court may lead to arrest by ICE. How can justice be served if some of our most vulnerable are afraid to come forward? I support the Protect Our Courts Act to ensure a fair and equitable system, and a safer and more secure community.”

Nassau DA Madeline Singas

“New York’s justice system works best when everyone has access. Immigrants who are victims of domestic violence, wage theft, fraud, or violent crime should be able to seek justice regardless of their status, and they should be able to come to court for that purpose without fear that their appearance will lead to civil arrest by ICE.”

Albany DA David Soares

“Courthouses should be safe spaces for everyone. Prosecutors, advocates and police have spent decades researching and applying best practices in an effort to encourage the reporting of violent crimes, including sexual assaults and domestic violence crimes. Demagoguery of the issue has caused fear and concern in many citizens and has led to decreased reporting. The activities of Immigration and Customs Enforcement is compromising our ability to hold accountable perpetrators who prey upon victims from vulnerable immigrant communities.”

Bronx DA Darcel D. Clark

“I endorse the Protect Our Courts Act because, as the Bronx District Attorney, I encourage people to report crimes... If a victim or witness who is essential to the prosecution of a heinous case is arrested by Immigration and Customs Enforcement when he or she shows up at the courthouse, we cannot go forward with the case, resulting in cases being dismissed and dangerous individuals being released back into the community. This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety.”

Brooklyn DA Eric Gonzalez

“These actions jeopardize public safety by instilling fear in immigrant communities, which makes victims and witnesses afraid to come forward to report crimes, and unable to get justice. Keeping Brooklyn safe and strengthening community trust in law enforcement are my top priorities as Brooklyn DA, and ICE’s actions undermine those important goals. I support the efforts to end this misguided practice.”

Manhattan DA Cyrus Vance, Jr.

“Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety. The fear of unjust deportation stops crime victims from coming forward, and stops defendants from responsibly attending their court dates. I thank Assembly Member Solages for her work on this bill and urge the legislature to pass it immediately, because all New Yorkers have the right to safely access our courts, whether they are documented or undocumented under federal law.”



**State of New York
Unified Court System
Office of the Chief Administrative Judge**

<h1 style="margin: 0;">D I R E C T I V E</h1>	
To: All Uniformed Personnel	Number: 1-2019 (Rev. from Memo issued 04/03/2019)
Subject: Protocol Governing Activities in Courthouses by Law Enforcement Agencies	Effective Date: April 17, 2019

1. It continues to be the policy of the Unified Court System (UCS) to permit law enforcement agencies to act in the pursuit of their official legal duties in New York State courthouses, provided that the conduct in no way disrupts or delays court operations or compromises public safety or court decorum.

2. The following protocol shall apply to representatives of law enforcement agencies who, while acting in their official capacity, enter a New York State courthouse to observe an individual or take an individual into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so:
 - Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to uniformed UCS uniformed personnel and state their specific law enforcement purpose and the proposed enforcement action to be taken. Uniformed UCS personnel shall immediately transmit this information to an appropriate supervisor.

 - The uniformed supervisor shall inform the judge if a law enforcement agent covered by this protocol is present in the courthouse with the intent of arresting or otherwise taking into custody a party or other participant in a case before the judge. Email notification to the Department of Public Safety should be made as soon as possible.

 - Arrests by agents of U.S. Immigration and Customs Enforcement may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest. A "judicial warrant" or "judicial order" is a warrant or order issued by a federal judge or federal magistrate judge. A UCS judge or court attorney shall review the warrant or order to confirm compliance with this requirement prior to any such arrest.

 - Absent leave of the court under extraordinary circumstances (e.g., extradition orders), no law enforcement action may be taken by a law enforcement agency in a courtroom.

 - UCS court security personnel shall file an Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse by a law enforcement agency covered by this protocol. For purposes of this protocol, "law enforcement action" shall include observation of court proceedings by law enforcement agents acting in their official capacity.

 - UCS court security personnel remain responsible for ensuring public safety and decorum in the courthouse at all times. This policy and protocol is subject to modification based on changed circumstances.


 Michael Magliano, Chief of Department
 Revised 04/17/2019