



NEW YORK CITY'S NEW IMMIGRATION LAW (Local Law 2011/62) MAY PROTECT YOUR UNDOCUMENTED CLIENTS FROM IMMIGRATION DETENTION AND DEPORTATION

If ICE has issued a detainer¹ against an undocumented person, DOC will NOT honor the detainer if this person doesn't have any misdemeanor or felony priors and:

- The current case is dismissed, resolved in a not guilty verdict, or resolved with a NYS violation, ACD, YO or JD adjudication;
 - Has no pending misdemeanor or felony cases or warrants from any jurisdiction;
 - Does not have an order of removal; and
 - Is not on a gang or terrorist watch list
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What the law does NOT change:

- ICE will still receive intake information for people in DOC custody, conduct interviews, and issue detainers
 - ICE may still commence removal proceedings against people they discover in DOC custody
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Bail Payment Issues:

- If it is clear that your undocumented client does not have a detainer, bail out as soon as possible before immigration issues a detainer
 - If your undocumented client has a detainer and is charged with any misdemeanor or felony, bailing out will result in a transfer to immigration custody
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Plea Decisions:

- To avoid transfer to immigration custody, your undocumented client may want to:
 - Spend more time in DOC custody to receive a violation, vacate prior convictions, or correct a RAP sheet (rap sheet errors may result in transfer to ICE—see back for more info and how to correct)
 - Reject non jail sentence misdemeanor or felony pleas after a detainer is lodged²
 - Take the risk of going to trial

¹ An immigration detainer is a request from ICE to DOC to detain your client for up to 48 hours (excluding Saturdays, Sundays, and holidays) after he or she would otherwise be released, in order to provide ICE an opportunity to assume custody of your client and initiate deportation proceedings. *See* 8 C.F.R. § 287.7. Under this new immigration law, DOC will not keep custody of qualifying individuals beyond the 48-hour period.

² Most undocumented clients will not have a detainer at arraignment and may want to take a non-jail-sentence misdemeanor or felony plea at arraignment to avoid a detainer. However, once a detainer is lodged, a client may want to reject any misdemeanor or felony plea, even if there is no jail sentence, because he or she will not be protected under this law.



DOC SCREENING PROCESS AND RAP SHEET ERRORS

DOC will look at your client's RAP sheet as well as federal gang and terrorist databases to determine if your client with a detainer is eligible for release under this law. If your client's record makes him or her ineligible for release, he or she will be handed over to ICE at time of discharge from DOC custody so that ICE can commence deportation proceedings.

Correcting Errors in RAP Sheets

Errors not corrected on a RAP sheet may result in your client being sent to ICE detention. Unfortunately, errors in RAP sheets are very common: some of the most common are closed cases that are listed as open, warrants that have been resolved but are listed as outstanding, and arrests for which charges were dismissed but for which final dispositions are not displayed.

Errors should typically be corrected by providing documentation of the error to the state Division of Criminal Justice Services (DCJS). To obtain supporting documentation, you can do the following:

- If the RAP sheet shows an open arrest or warrant, contact the police precinct where the arrest took place or where the warrant was issued. Sometimes the records may not be complete and a FOIL request must be filed.
- If the client's charge was dismissed by a court, then contact the court clerk to get a Certificate of Disposition showing the dismissal. (Note that the appropriate terminology may be different outside New York.)
- If the RAP sheet shows an open charge but the case was not prosecuted, then contact the District Attorney's office to get evidence of a "decline prosecution" (DP) decision.

It is crucial that this process be started as early as possible, as the procedure can take approximately six weeks to complete via DCJS. To fix errors, send a letter detailing the RAP sheet mistake(s) and enclosing documentation of the correct disposition via certified mail to DCJS. DCJS will mail confirmation when corrections have been made.

In cases where a correction must be made more quickly, you can contact DCJS directly by phone to expedite your request *and* you can correct the error in CRIMS (an OCA database) via the relevant court clerk. If you make the correction via CRIMS, you will have to inform the DOC Office of Constituent Services at (718) 546-1500 or constituentservices@doc.nyc.gov that they should rely on CRIMS in your client's case rather than DCJS.

More Information

If you have questions about this law or if DOC has violated the 48-hour detainer rule for your client, please contact:

Immigrant Defense Project Legal Hotline, (212) 725-6422, info@immigrantdefenseproject.org