



NEW YORK CITY'S 2013 IMMIGRATION LAWS (Local Laws 2013/021 and 2013/022) MAY PROTECT YOUR NON-CITIZEN CLIENTS FROM TRANSFER TO IMMIGRATION DETENTION

These new laws, effective July 2013 replace NYC's first detainer law (Local Law 2011/62), and apply to clients with immigration detainers in both the New York Police Department (NYPD) and Department of Corrections (DOC) custody.

If ICE has issued a detainer¹, in certain cases NYPD and DOC will NOT honor the detainer. The attached chart (page 3) details when a detainer will and will not be honored by NYPD or DOC according to the new detainer discretion law.

Since the activation of Secure Communities in New York City in May 2012, more immigrants have detainers at arraignment. Under this new law, certain clients with detainers may be protected from being turned over to ICE custody if they bail out or are ROR'ed at arraignment. Additionally, certain clients may be able to take certain misdemeanor pleas, or alternative dispositions, and avoid transfer to immigration detention whether in NYPD or DOC custody.

Bail Payment Issues:

- If it is clear that your client does not have a detainer, bail out as soon as possible before immigration issues a detainer.
- If your client has a detainer at arraignment and you are unsure whether the detainer will be honored by the NYPD, bailing out or being ROR'ed could result in a transfer to immigration custody, you and your client will have more time to research for eligibility for release if your client enters DOC custody. Please contact the IDP hotline if you have questions at 212-725-6422.

Plea Decisions:

- To avoid transfer to immigration custody, your client may want to:
 - o 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)
 - o If a detainer is lodged, reject non-jail sentence misdemeanor or felony pleas that would release someone from NYPD or DOC custody to ICE custody
 - o Take the risk of going to trial

What the law does NOT change:

- ICE will still receive fingerprints from the NYPD and issue detainers
- 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 NYPD or DOC custody

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.



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 or if NYPD or DOC has violated the 48-hour detainer rule for your client, please contact:

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

NYC Detainer Law: Effective July 16, 2013

 IMMIGRANT DEFENSE PROJECT	ICE Detainer Will Be Honored By NYPD/DOC	ICE Detainer Will NOT Be Honored By NYPD/DOC
1 Pending Charge	<ul style="list-style-type: none"> • Felony charge OR • 1 misdemeanor charge for: <ul style="list-style-type: none"> » NYPL 265.01 - when relating to a firearm, rifle, shotgun, bullet or ammunition » NYPL 215.50 criminal contempt (see exceptions to the right) » NYPL 120.00 - assault in the 3rd degree (see exceptions to the right) » NYPL Article 130 - sex offenses » VTL Article 31 - alcohol and drug driving related offenses 	<ul style="list-style-type: none"> • 1 misdemeanor charge (see exceptions to the left) » Unless client has been released pursuant to NYCPL 170.70 for NYPL 215.50 » Unless client has been released pursuant to NYCPL 170.70 for NYPL 120.00 • Mandatory Y.O. or J.D. adjudication
Multiple Open Cases	<ul style="list-style-type: none"> • 2 or more misdemeanor charges in separate cases (see exceptions to the right) » Unless the NYPL 240.37 charges relate to “patronizing a prostitute” 	<ul style="list-style-type: none"> • Unless 2 or more misdemeanor charges in separate cases for: <ul style="list-style-type: none"> » VTL 511(1): aggravated unlicensed driving in the 3rd » VTL 511(2)(a)(i): aggravated unlicensed driving in the 2nd when relating to a previous conviction in the preceding 18 months » VTL 511(2)(a)(iv): aggravated unlicensed driving in the 2nd when relating to 3 or more suspensions » NYPL 230.00: prostitution » NYPL 240.37 loitering for the purposes of prostitution (see exception to the left)
Warrants	<ul style="list-style-type: none"> • Criminal warrant from any jurisdiction 	
Prior Conviction	<ul style="list-style-type: none"> • Felony conviction • Misdemeanor conviction (see exceptions to the right) » Unless the NYPL 240.37 conviction relates to “patronizing a prostitute” 	<ul style="list-style-type: none"> • Unless 1 or more misdemeanor convictions for: <ul style="list-style-type: none"> » NYPL 230.00 » NYPL 240.37 (see exception to the left) » VTL 511(1) » VTL 511(2)(a)(i) » VTL 511(2)(a)(iv) • Misdemeanor convictions more than 10 years prior to the instant arrest • Y.O. or J.D. adjudication
Deportation Issues	<ul style="list-style-type: none"> • Order of removal or deportation 	<ul style="list-style-type: none"> • Prior interaction with DHS that didn’t result in order of removal/deportation
“Public Safety” Issues	<ul style="list-style-type: none"> • Client is on a gang or terrorist watch list 	