



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3144

Introduced 1/12/2022, by Sen. Celina Villanueva

SYNOPSIS AS INTRODUCED:

New Act

Creates the Right to Counsel in Immigration Proceedings Act. Establishes the Task Force on Counsel in Immigration Proceedings. Provides for members, compensation, and support staff. Provides that the Task Force shall investigate the implementation of universal representation for covered individuals in immigration removal proceedings. Provides that the Task Force shall submit a report of its findings in the investigation and its recommendations for how to fully provide legal representation for covered individuals facing immigration proceedings no later than July 1, 2023. Repeals the Act July 1, 2024. Effective immediately.

LRB102 22746 LNS 31892 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Right
5 to Counsel in Immigration Proceedings Act.

6 Section 5. Purpose; findings.

7 (a) The State is committed to fair and equal treatment of
8 all individuals, and, in particular, of individuals at risk of
9 removal and separation from their families through the federal
10 immigration detention and deportation system.

11 (b) While an individual in removal proceedings has the
12 right to legal representation, the representation is at the
13 individual's own expense and may be beyond the financial
14 capacity of low-income households.

15 (c) Nearly two-thirds of all individuals facing
16 immigration removal proceedings throughout the United States
17 lack legal representation. Among the individuals in
18 immigration detention, only one in 6 individuals were
19 represented by counsel. Among the individuals facing removal
20 proceedings in this State, less than one in 3 individuals,
21 generally, and less than one in 8 individuals in detention
22 were represented by counsel.

23 (d) Legal representation is essential to effective

1 identification and presentation of avenues for release from
2 detention and relief from removal. Individuals in immigration
3 detention are 4 times more likely to win release if
4 represented by legal counsel than individuals without
5 representation by legal counsel. In removal proceedings,
6 detained individuals are 11 times more likely to succeed in
7 claims for relief if represented by legal counsel than
8 individuals without representation by legal counsel.

9 (e) Legal representation in removal proceedings has
10 improved the efficiency of the proceedings and the
11 administration of justice as individuals are better able to
12 present their defenses and claims for relief.

13 (f) It is the public policy of this State that all covered
14 individuals should have the right to ongoing legal
15 representation in covered proceedings. This right to counsel
16 should include provisions of funds sufficient to ensure that
17 legal service providers are funded to:

18 (1) engage support staff, interpretation staff, and
19 investigative staff;

20 (2) contract as reasonably necessary with independent
21 experts, including country conditions experts and forensic
22 medical experts; and

23 (3) contract as reasonably necessary with social
24 service providers providing supportive and rehabilitative
25 services to covered individuals during the course of their
26 removal proceedings.

1 (g) This State should establish a program and a dedicated
2 fund to provide the legal services described in subsection
3 (f).

4 Section 10. Definitions. As used in this Act:

5 "Covered individual" means any individual subject to
6 removal proceedings under 8 U.S.C. 1225, 1228, and 1229a or a
7 final order of removal under 8 CFR 1241.1, including any
8 related covered proceeding, regardless of age, who is: (i) a
9 domiciliary of this State; or (ii) an individual who is not a
10 domiciliary of this State if removal proceedings are conducted
11 against the individual in this State.

12 "Covered proceeding" means any proceeding in which a
13 covered individual is a party and is seeking an avenue of
14 relief from removal from the United States or is challenging
15 his or her arrest or detention under the Immigration and
16 Nationality Act and its implementing regulations. "Covered
17 proceeding" includes:

18 (1) a proceeding or hearing in an immigration court
19 and any related application to United States Citizenship
20 and Immigration Services connected to the proceeding or
21 hearing;

22 (2) an immigration proceeding conducted by telephone
23 or video teleconference;

24 (3) a proceeding in a State court for purposes of
25 obtaining a special findings order;

1 (4) a proceeding in a State court for purposes of
2 vacating a conviction or modifying a sentence in which the
3 conviction or sentence is relevant to the immigration
4 proceedings at issue;

5 (5) a credible fear interview or reasonable fear
6 interview;

7 (6) a habeas corpus petition to a federal district
8 court challenging detention under the Immigration and
9 Nationality Act;

10 (7) a motion to reopen or reconsider under 8 U.S.C.
11 1229a;

12 (8) a petition for review under 8 U.S.C. 1252;

13 (9) a remand to a federal district court from the
14 United States Court of Appeals for fact-finding purposes;
15 and

16 (10) any appeal related to any of the foregoing to the
17 Board of Immigration Appeals, the United States Court of
18 Appeals, or the United States Supreme Court.

19 "Domicile" means a true, fixed, and permanent legal home
20 of an individual or the place to which the individual intends
21 to return even though the individual may reside elsewhere.

22 "Domiciliary" means an individual who has established a
23 domicile with respect to a particular jurisdiction.

24 "Immigration court" means a tribunal of the Executive
25 Office for Immigration Review, or a successor entity, tasked
26 with deciding the inadmissibility or deportability of a

1 noncitizen of the United States that is presided over by an
2 immigration judge as defined in 8 U.S.C. 1101(b) (4).

3 "Legal services" means individual legal assistance in a
4 single consultation, or ongoing legal representation, provided
5 by a legal services provider to a covered individual, and all
6 legal advice, advocacy, and assistance associated with the
7 service.

8 "Legal services provider" means an individual,
9 organization, or association that has the authority to provide
10 legal services.

11 Section 15. Task Force on Counsel in Immigration
12 Proceedings.

13 (a) The Task Force on Counsel in Immigration Proceedings
14 is established.

15 (b) The Task Force shall consist of the following 7
16 members:

17 (1) the Governor, or his or her designee;

18 (2) the President of the Senate, or his or her
19 designee;

20 (3) the Minority Leader of the Senate, or his or her
21 designee;

22 (4) the Speaker of the House of Representatives, or
23 his or her designee;

24 (5) the Minority Leader of the House of
25 Representatives, or his or her designee;

1 (6) the Attorney General, or his or her designee; and

2 (7) the Secretary of Human Services, or his or her
3 designee.

4 (c) Members of the Task Force shall serve without
5 compensation.

6 (d) The Department of Human Services shall provide
7 administrative and other support to the Task Force.

8 (e) The Task Force shall investigate the implementation of
9 universal representation for covered individuals in
10 immigration removal proceedings as described in subsection (f)
11 of Section 5. The Task Force investigation shall include, but
12 is not limited to, the following matters:

13 (1) the estimated number of covered individuals facing
14 a covered proceeding;

15 (2) the current infrastructure for providing
16 independent, competent, and zealous legal representation
17 in a covered proceeding;

18 (3) the additional resources, including salaries and
19 benefits for attorneys and support staff, training,
20 supervision, and material resources that would need to be
21 added to the existing infrastructure described in
22 paragraph (2) in order to provide independent, competent,
23 and zealous legal representation for the number of covered
24 individuals described in paragraph (1), including
25 mechanisms for subcontracted relationships with
26 independent experts and social service providers;

1 (4) the estimated annual cost of the additional
2 resources described in paragraph (3);

3 (5) funding sources, public and private, that are or
4 would be available to pay for the additional resources
5 described in paragraph (3); and

6 (6) the estimated annual cost of bond payment support
7 needed for covered individuals facing a covered
8 proceeding, and the feasibility of a State-sponsored bond
9 fund for those individuals.

10 (f) In order for the Governor and General Assembly to
11 evaluate different scopes of legal representation in
12 immigration court proceedings, the Task Force investigation
13 described in subsection (e) shall provide additional findings
14 in the following categories:

15 (1) State domiciliary versus non-State domiciliary
16 covered individuals, and, among the State domiciliary
17 covered individuals, the regions of residence within the
18 State;

19 (2) household income above and below 250% of the
20 federal poverty line;

21 (3) type of proceedings in which the covered
22 individuals need legal representation; and

23 (4) current percentages of covered individuals in
24 covered proceedings with and without legal representation.

25 (g) The Task Force shall submit a report of its findings in
26 the investigation described in subsection (e) and its

1 recommendations for how to fully provide legal representation
2 for covered individuals facing covered proceedings no later
3 than July 1, 2023.

4 Section 20. Repeal. This Act is repealed on July 1, 2024.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.