



Rep. Jennifer Gong-Gershowitz

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LRB101 20621 LNS 71288 a

1 AMENDMENT TO HOUSE BILL 5502

2 AMENDMENT NO. _____. Amend House Bill 5502 by replacing
3 everything after the enacting clause with the following:

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

1 lack legal representation. Among the individuals in
2 immigration detention, only one in 6 individuals were
3 represented by counsel. Among the individuals facing removal
4 proceedings in this State, less than one in 3 individuals,
5 generally, and less than one in 8 individuals in detention were
6 represented by counsel.

7 (d) Legal representation is essential to effective
8 identification and presentation of avenues for release from
9 detention and relief from removal. Individuals in immigration
10 detention are 4 times more likely to win release if represented
11 by legal counsel than individuals without representation by
12 legal counsel. In removal proceedings, detained individuals
13 are 11 times more likely to succeed in claims for relief if
14 represented by legal counsel than individuals without
15 representation by legal counsel.

16 (e) Legal representation in removal proceedings has
17 improved the efficiency of the proceedings and the
18 administration of justice as individuals are better able to
19 present their defenses and claims for relief.

20 (f) It is the public policy of this State that all covered
21 individuals should have the right to ongoing legal
22 representation in covered proceedings. This right to counsel
23 should include provisions of funds sufficient to ensure that
24 legal service providers are funded to:

25 (1) engage support staff, interpretation staff, and
26 investigative staff;

1 (2) contract as reasonably necessary with independent
2 experts, including country conditions experts and forensic
3 medical experts; and

4 (3) contract as reasonably necessary with social
5 service providers providing supportive and rehabilitative
6 services to covered individuals during the course of their
7 removal proceedings.

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

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

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

18 "Covered proceeding" means any proceeding in which a
19 covered individual is a party and is seeking an avenue of
20 relief from removal from the United States or is challenging
21 his or her arrest or detention under the Immigration and
22 Nationality Act and its implementing regulations. "Covered
23 proceeding" includes:

24 (1) a proceeding or hearing in an immigration court and
25 any related application to United States Citizenship and

1 Immigration Services connected to the proceeding or
2 hearing;

3 (2) an immigration proceeding conducted by telephone
4 or video teleconference;

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

7 (4) a proceeding in a State court for purposes of
8 vacating a conviction or modifying a sentence in which the
9 conviction or sentence is relevant to the immigration
10 proceedings at issue;

11 (5) a credible fear interview or reasonable fear
12 interview;

13 (6) a habeas corpus petition to a federal district
14 court challenging detention under the Immigration and
15 Nationality Act;

16 (7) a motion to reopen or reconsider under 8 U.S.C.
17 1229a;

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

19 (9) a remand to a federal district court from the
20 United States Court of Appeals for fact-finding purposes;
21 and

22 (10) any appeal related to any of the foregoing to the
23 Board of Immigration Appeals, the United States Court of
24 Appeals, or the United States Supreme Court.

25 "Domicile" means a true, fixed, and permanent legal home of
26 an individual or the place to which the individual intends to

1 return even though the individual may reside elsewhere.

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

4 "Immigration court" means a tribunal of the Executive
5 Office for Immigration Review, or a successor entity, tasked
6 with deciding the inadmissibility or deportability of a
7 noncitizen of the United States that is presided over by an
8 immigration judge as defined in 8 U.S.C. 1101(b)(4).

9 "Legal services" means individual legal assistance in a
10 single consultation, or ongoing legal representation, provided
11 by a legal services provider to a covered individual, and all
12 legal advice, advocacy, and assistance associated with the
13 service.

14 "Legal services provider" means an individual,
15 organization, or association that has the authority to provide
16 legal services.

17 Section 15. Task Force on Counsel in Immigration
18 Proceedings.

19 (a) The Task Force on Counsel in Immigration Proceedings is
20 established.

21 (b) The Task Force shall consist of the following 7
22 members:

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

24 (2) the President of the Senate, or his or her
25 designee;

1 (3) the Minority Leader of the Senate, or his or her
2 designee;

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

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

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

8 (7) the Secretary of Human Services, or his or her
9 designee.

10 (c) Members of the Task Force shall serve without
11 compensation.

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

14 (e) The Task Force shall investigate the implementation of
15 universal representation for covered individuals in
16 immigration removal proceedings as described in subsection (f)
17 of Section 5. The Task Force investigation shall include, but
18 is not limited to, the following matters:

19 (1) the estimated number of covered individuals facing
20 a covered proceeding;

21 (2) the current infrastructure for providing
22 independent, competent, and zealous legal representation
23 in a covered proceeding;

24 (3) the additional resources, including salaries and
25 benefits for attorneys and support staff, training,
26 supervision, and material resources that would need to be

1 added to the existing infrastructure described in
2 paragraph (2) in order to provide independent, competent,
3 and zealous legal representation for the number of covered
4 individuals described in paragraph (1), including
5 mechanisms for subcontracted relationships with
6 independent experts and social service providers;

7 (4) the estimated annual cost of the additional
8 resources described in paragraph (3);

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

12 (6) the estimated annual cost of bond payment support
13 needed for covered individuals facing a covered
14 proceeding, and the feasibility of a State-sponsored bond
15 fund for those individuals.

16 (f) In order for the Governor and General Assembly to
17 evaluate different scopes of legal representation in
18 immigration court proceedings, the Task Force investigation
19 described in subsection (e) shall provide additional findings
20 in the following categories:

21 (1) State domiciliary versus non-State domiciliary
22 covered individuals, and, among the State domiciliary
23 covered individuals, the regions of residence within the
24 State;

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

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

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

5 (g) The Task Force shall submit a report of its findings in
6 the investigation described in subsection (e) and its
7 recommendations for how to fully provide legal representation
8 for covered individuals facing covered proceedings no later
9 than July 1, 2021.

10 Section 20. Repeal. This Act is repealed on July 1, 2022.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.".