

# SB3861



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB3861

Introduced 2/14/2020, 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, 2021. Repeals the Act July 1, 2022. Effective immediately.

LRB101 20709 LNS 70381 b

A BILL FOR

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 were  
22 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 represented  
4 by legal counsel than individuals without representation by  
5 legal counsel. In removal proceedings, detained individuals  
6 are 11 times more likely to succeed in claims for relief if  
7 represented by legal counsel than individuals without  
8 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 (f).

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

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

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

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

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

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

25 (4) a proceeding in a State court for purposes of

1           vacating a conviction or modifying a sentence in which the  
2           conviction or sentence is relevant to the immigration  
3           proceedings at issue;

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

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

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

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

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

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

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

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

23          "Immigration court" means a tribunal of the Executive  
24          Office for Immigration Review, or a successor entity, tasked  
25          with deciding the inadmissibility or deportability of a  
26          noncitizen of the United States that is presided over by an

1 immigration judge as defined in 8 U.S.C. 1101(b)(4).

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

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

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

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

14 (b) The Task Force shall consist of 7 members appointed by  
15 the Governor, in consultation with the President of the Senate,  
16 the Speaker of the House of Representatives, the Attorney  
17 General, and the Secretary of Human Services.

18 (c) Members of the Task Force shall serve without  
19 compensation.

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

22 (e) The Task Force shall investigate the implementation of  
23 universal representation for covered individuals in  
24 immigration removal proceedings as described in subsection (f)  
25 of Section 5. The Task Force investigation shall include, but

1 is not limited to, the following matters:

2 (1) the estimated number of covered individuals facing  
3 a covered proceeding;

4 (2) the current infrastructure for providing  
5 independent, competent, and zealous legal representation  
6 in a covered proceeding;

7 (3) the additional resources, including salaries and  
8 benefits for attorneys and support staff, training,  
9 supervision, and material resources that would need to be  
10 added to the existing infrastructure described in  
11 paragraph (2) in order to provide independent, competent,  
12 and zealous legal representation for the number of covered  
13 individuals described in paragraph (1), including  
14 mechanisms for subcontracted relationships with  
15 independent experts and social service providers;

16 (4) the estimated annual cost of the additional  
17 resources described in paragraph (3);

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

21 (6) the estimated annual cost of bond payment support  
22 needed for covered individuals facing a covered  
23 proceeding, and the feasibility of a State-sponsored bond  
24 fund for those individuals.

25 (f) In order for the Governor and General Assembly to  
26 evaluate different scopes of legal representation in

1 immigration court proceedings, the Task Force investigation  
2 described in subsection (e) shall provide additional findings  
3 in the following categories:

4 (1) State domiciliary versus non-State domiciliary  
5 covered individuals, and, among the State domiciliary  
6 covered individuals, the regions of residence within the  
7 State;

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

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

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

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

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

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.