

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 101
Judiciary Committee Substitute Adopted 3/9/21

Short Title: Require Cooperation with ICE 2.0.

(Public)

Sponsors:

Referred to:

February 16, 2021

A BILL TO BE ENTITLED
AN ACT TO REQUIRE COMPLIANCE WITH IMMIGRATION DETAINERS AND
ADMINISTRATIVE WARRANTS AND TO REQUIRE CERTAIN REPORTS FROM
LOCAL LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 162-62 reads as rewritten:

"§ 162-62. Legal status of prisoners.

"(a) When any person charged with a felony ~~or an impaired driving offense under~~
G.S. 90-95 or Article 6, or a crime under Article 7B, Article 8, Article 10A, or Article 13A of
Chapter 14 of the General Statutes, and is confined for any period in a county jail, local
confinement facility, district confinement facility, ~~or satellite jail/work release unit, satellite jail,~~
~~or work release unit,~~ the administrator or other person in charge of the facility shall attempt to
determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or
by examination of any relevant documents, or both.

(b) If the administrator or other person in charge of the facility is unable to determine if
that prisoner is a legal resident or citizen of the United States or its territories, the administrator
or other person in charge of the facility holding the ~~prisoner, where possible, prisoner~~ shall make
a query of Immigration and Customs Enforcement of the United States Department of Homeland
Security. If the prisoner has not been lawfully admitted to the United States, the United States
Department of Homeland Security will have been notified of the prisoner's status and
confinement at the facility by its receipt of the query from the facility.

(b1) When any person charged with a criminal offense is confined for any period in a
county jail, local confinement facility, district confinement facility, satellite jail, or work release
unit, and the administrator or other person in charge of the facility has been notified that
Immigration and Customs Enforcement of the United States Department of Homeland Security
has issued a detainer and administrative warrant that reasonably appears to be for the person in
custody, the following shall apply:

(1) Prior to the prisoner's release, and after receipt of the detainer and
administrative warrant, or a copy thereof, by the administrator or other person
in charge of the facility, the prisoner shall be taken without unnecessary delay
before a State judicial official who shall be provided with the detainer and
administrative warrant, or a copy thereof.

(2) The judicial official shall issue an order directing the prisoner be held in
custody if the prisoner appearing before the judicial official is the same person
subject to the detainer and administrative warrant.



(3) Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order issued under this subsection shall be released upon the first of the following conditions:

- a. The passage of 48 hours from receipt of the detainer and administrative warrant.
- b. Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.
- c. The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

(b2) No State or local law enforcement officer or agency shall have criminal or civil liability for action taken pursuant to an order issued under subsection (b1) of this section.

(b3) If the administrator or other person in charge of the facility holding the prisoner (i) willfully fails to make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security when required to do so under subsection (b) of this section or (ii) willfully fails to hold a prisoner for 48 hours when required to do so under subsection (b1) of this section, the administrator or other person in charge of the facility shall be guilty of a Class 3 misdemeanor.

(c) ~~Nothing~~ Except as provided in subsection (b1) of this section, nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.

...."

SECTION 1.(b) Beginning October 1, 2022, and annually thereafter, the administrator or other person in charge of each county jail, local confinement facility, district confinement facility, or satellite jail or work release unit within the State shall report to the Joint Legislative Oversight Committee on Justice and Public Safety on each of the following with regard to compliance with G.S. 162-62 from the preceding July 1st to June 30th:

- (1) The number of times the facility made a query of Immigration and Customs Enforcement.
- (2) The number of times Immigration and Customs Enforcement responded to a query.
- (3) The number of times Immigration and Customs Enforcement sent a detainer request for a prisoner.
- (4) The number of times a prisoner was held for the full 48 hours.
- (5) The number of times a prisoner was held then released following the satisfaction of proof of legal residence or citizenship required by that subsection.
- (6) The number of times a prisoner was held who would have otherwise been eligible for release from custody.
- (7) The number of times Immigration and Customs Enforcement took custody of a prisoner after notification from the administrator or other person in charge of the facility holding the prisoner.

SECTION 2. This act becomes effective December 1, 2021, and applies to offenses committed on or after that date.