



HOUSE BILL 370: Require Cooperation with ICE Detainers.

2019-2020 General Assembly

Committee:		Date:	December 17, 2019
Introduced by:	Reps. D. Hall, B. Jones, Saine, C. Smith	Prepared by:	Shawn Middlebrooks Staff Attorney
Analysis of:	Ratified		

OVERVIEW: *House Bill 370 would (1) require confinement facilities to comply with detainers and administrative warrants issued by Immigration and Customs Enforcement (ICE); (2) authorize the removal of a sheriff or officer from office for failing to comply with ICE detainers, and (3) require confinement facilities to submit annual reports to the Joint Legislative Oversight Committee on Justice and Public Safety (JPS Oversight) regarding compliance with ICE detainers.*

House Bill 370 was ratified by the General Assembly on August 20, 2019, and vetoed by the Governor on August 21, 2019.

CURRENT LAW:

G.S. 162-62 provides that whenever any person is arrested for a felony or impaired driving offense, the administrator of the confinement facility shall attempt to verify the prisoner's immigration status, and, where possible, make an inquiry of Immigration and Customs Enforcement (ICE) of the United States Department of Homeland Security if the administrator is unable to determine the prisoner's status.

Federal law authorizes the *political subdivision of a State* to communicate with the U.S. Attorney General regarding the immigration status of any individual, including reporting knowledge that the person is not lawfully present in the United States, or to otherwise cooperate with the U.S. Attorney General in the identification, apprehension, *detention*, or removal of persons not lawfully present in the United States. 8 U.S.C. § 1357(g).

BILL ANALYSIS:

Section 1 of House Bill 370 would make the following changes and additions to G.S. 162-62:

- Amend the requirement to investigate the legal status of a person in confinement to include any person charged with any criminal offense (currently only required if the person is charged with a felony or impaired driving).
- Provide that a confinement facility administrator *shall* query ICE if they are unable to determine the legal status of a prisoner.
- Require confinement facilities to allow officials from ICE to interview prisoners in person, via telephone, or by other electronic means.
- Require that a prisoner subject to a detainer and administrative warrant be taken before a judicial official without unnecessary delay.

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- Require a judicial official to order that a prisoner subject to a detainer and administrative warrant be held in custody.
- Clarify when a prisoner held pursuant to a detainer and administrative warrant may be released.
- Exempt a law enforcement officer or agency from criminal or civil liability for actions taken pursuant to an order under this section.

Section 2 of House Bill 370 would authorize the removal of a sheriff or police officer from office for failing or refusing to comply with any provision of G.S. 162-62.

Section 3 of House Bill 370 would require confinement facilities to submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety regarding compliance with G.S. 162-62.

EFFECTIVE DATE: House Bill 370 was ratified by the General Assembly on August 20, 2019, and vetoed by the Governor on August 21, 2019.

BACKGROUND:

In November 2018, the North Carolina Court of Appeals decided *Chavez v. Carmichael*. In that case, the court found that the State superior court did not have subject matter jurisdiction to grant a petition for writ of habeas corpus because the petitioners were imprisoned under the authority of the United States. *Chavez v. Carmichael*, 822 S.E.2d 131 (2018). That case has been accepted for review by the North Carolina Supreme Court.