



SENATE BILL 101: Require Cooperation with ICE 2.0.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2021-2022 General Assembly

Committee:	House Judiciary 4. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	June 28, 2022
Introduced by:	Sens. Edwards, Sanderson, Britt	Prepared by:	Kara McCraw*
Analysis of:	PCS to Third Edition S101-CSCI-1		Debbie Griffiths Staff Attorneys

OVERVIEW: Senate Bill 101 would:

- Require that Immigration and Customs Enforcement of the United States Department of Homeland Security ("ICE") is queried when an individual charged with certain offenses is in custody and legal residency or United States citizenship status is undetermined.
- Require a judicial official to order that a prisoner subject to a detainer and administrative warrant be held in custody for 48 hours or until ICE resolves the request.
- Create reporting requirements related to ICE queries.

The PCS for SB 101 would change the first due date of the annual reporting required by Section 1.(b) to October 1, 2023, from October 1, 2022, and would change the effective date of the legislation to December 1, 2022, from December 1, 2021.

CURRENT LAW:

Article I, § 8, of the U.S. Constitution authorizes the federal government to regulate uniform laws related to immigration.

G.S. 162-62 directs an administrator or other person in charge of a local confinement facility:

- To attempt to determine whether a person is a legal resident of the United States if the person is charged with a felony or impaired driving offense.
- To send a query, where possible, to ICE if the prisoner's status as a legal resident or citizen of the United States cannot be determined.

BILL ANALYSIS: Section 1(a) would require the administrator, or other person in charge of the confinement facility, to query ICE if unable to determine if a person in custody and charged with certain offenses is a legal resident or citizen of the U.S.

The following types of offenses would trigger an ICE query:

- (1) G.S. 90-95- Felonies related to the Controlled Substance Act (Not simple possession or other misdemeanors.)
- (2) A felony offense under any of the following:
 - Article 6 of Chapter 14 - Homicide offenses.
 - Article 7B of Chapter 14 - Rape and Other Sex Offenses.
 - Article 10 of Chapter 14 - Kidnapping and Abduction.

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Article 10A of Chapter 14 - Human Trafficking offenses.

Article 13A of Chapter 14 - Offenses in violation of the North Carolina Criminal Gang Suppression Act.

- (3) An A1 misdemeanor or felony Assault. (This would include Assault on a Female and the other most serious misdemeanors but not a simple assault.)
- (4) A violation of a Domestic Violence Protective Order.

Section 1(a) would also:

- Create a process for a judicial official to follow for every individual (i) in custody, and (ii) subject to an ICE detainer or administrative warrant.
- Require a judicial official to order that a prisoner subject to a detainer and administrative warrant be held in custody for 48 hours or until ICE takes the prisoner into custody or rescinds the detainer or warrant, whichever occurs first.

Section 1(b) would create an annual reporting requirement for local confinement facilities to the Joint Legislative Oversight Committee on Justice and Public Safety on ICE queries, related releases, and outcomes for the preceding July 1-June 30.

EFFECTIVE DATE: The PCS for SB101 would become effective December 1, 2022.

BACKGROUND:

8 U.S.C. § 1357(g) authorizes state and local law enforcement agencies to enter into a Memorandum of Agreement with ICE to perform immigration law enforcement functions under the supervision of ICE officers.

G.S. 128-1.1(c1) allows State and local law enforcement officers in North Carolina to perform functions of a federal officer under 8 U.S.C. § 1357(g) if the agency has entered into a Memorandum of Agreement with the federal government.

ICE currently lists 15 local law enforcement agencies in North Carolina as participating entities in the 287(g) program:

<https://www.ice.gov/identify-and-arrest/287g>

The **North Carolina Supreme Court** has found that, because federal law related to immigration pre-empts state law, a State court lacks jurisdiction to make a determination regarding the validity of any immigration-related process such as an arrest warrant or ICE detainer by an entity operating under a 287(g) agreement with the federal government. *Chavez v. McFadden*, (June 5, 2020)

An **I-247 Immigration Detainer** is a request issued by ICE that an agency maintain custody of the subject of the detainer for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, to allow the Department of Homeland Security to take custody of the subject.

An **I-200 Warrant for Arrest of Alien** directs an agency to arrest an individual for removal proceedings and is issued by ICE when an immigration officer has found probable cause to believe that an individual is subject to removal from the United States.

**This summary was substantially contributed to by Jennifer Bedford, former Staff Attorney.*