



# SENATE BILL 101: Require Cooperation with ICE 2.0.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 1, 2022
<b>Introduced by:</b>	Sens. Edwards, Sanderson, Britt	<b>Prepared by:</b>	Debbie Griffiths Staff Attorney
<b>Analysis of:</b>	Ratified		

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**OVERVIEW:** *SB 101 would have done the following:*

- *Require that Immigration and Customs Enforcement of the United States Department of Homeland Security (ICE) be queried when an individual charged with certain offenses was in custody and that person's legal residency or United States citizenship status was 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.*

*SB 101 was ratified by the General Assembly on July 1, 2022, and vetoed by the Governor on July 11, 2022.*

**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.
- Send a query, where possible, to Immigration and Customs Enforcement of the United States Department of Homeland Security (ICE) if the prisoner's status as a legal resident or citizen of the United States cannot be determined.

**BILL ANALYSIS:** SB 101 would have required the administrator, or other person in charge of the confinement facility (administrator), 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 have triggered 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.
  - Article 10A of Chapter 14 – Human Trafficking offenses.
  - Article 13A of Chapter 14 – Offenses in violation of the North Carolina Criminal Gang Suppression Act.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

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- (3) A Class 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.

An administrator in charge of the confinement facility would have been required to take a prisoner before a State judicial official before the prisoner's release if the administrator received notice that ICE issued a detainer and administrative warrant for a person charged with a criminal offense who was confined in that facility.

The State judicial official would have been provided a copy of the detainer and administrative warrant. The State judicial official would have been required to issue an order directing the prisoner be held in custody until the earliest of the following:

- (1) 48 hours passed from receipt of the ICE detainer and administrative warrant.
- (2) ICE took custody of the prisoner.
- (3) ICE rescinded the detainer.

Local confinement facilities would have been required to report annually to the Joint Legislative Oversight Committee on Justice and Public Safety on ICE queries, related releases, and outcomes for the preceding year.

**EFFECTIVE DATE:** This bill was ratified by the General Assembly on July 1, 2022, and vetoed by the Governor on July 11, 2022.

## **BACKGROUND:**

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 Kara McCraw, Staff Attorney, and Jennifer Bedford, former Staff Attorney.*