



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:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	March 9, 2021
Introduced by:	Sens. Edwards, Sanderson, Britt	Prepared by:	Jennifer H. Bedford
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 101 would:*

- *Require that individuals charged with certain crimes and subject to a federal detainer request, be held for 48 hours.*
- *Create a Class 1 Misdemeanor for willful failure to query ICE or detain, as required.*
- *Create reporting requirements related to ICE queries.*
- *Amend the procedure for pretrial release to include judicial consideration of collateral circumstances that may increase the likelihood of a failure to appear.*

CURRENT LAW:

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

8 U.S.C. § 1357(g) authorizes state and local law enforcement agencies to enter into a Memorandum of Agreement with Immigration Customs Enforcement (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.

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 of the United States cannot be determined.

The **North Carolina Supreme Court** has found that 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 given that the custodian claims to be operating as a de facto immigration officer in such circumstances. *Chavez v. McFadden*, (June 5, 2020)

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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 prisoner charged with a felony or impaired driving offense is a legal resident of the U.S.

Section 1(a) would require that a prisoner subject to an ICE Detainer and charged with one of the following types of offenses, be held for 48 hours:

G.S. 90-95- Certain violations related to the Controlled Substance Act.

Article 6 of Chapter 14- Homicide.

Article 7B of Chapter 14- Rape and Other Sex Offenses.

Article 8 of Chapter 14- Assaults.

Article 10A of Chapter 14- Human Trafficking.

Article 13A of Chapter 14- North Carolina Criminal Gang Suppression Act.

Section 1(a) would also:

- Allow an administrator or other person in charge of the confinement facility to release an individual subject to a ICE Detainer if all pretrial release conditions are satisfied and proof of citizenship or legal resident status is provided.
- Create a Class 1 Misdemeanor for willful failing to query ICE or willfully failing to hold an inmate for 48 hours, when required to do so.

Section 1(b) would create an annual reporting requirement for local confinement facilities to make the General Assembly aware of ICE queries, related releases, and outcomes.

Section 2 would require a judicial official to take collateral circumstances that may increase the likelihood that a defendant fails to appear, into consideration when determining pretrial release conditions.

EFFECTIVE DATE: This act would become effective December 1, 2021, and apply to offenses committed on or after that date.

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.

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>