



HOUSE BILL 10: Require Sheriffs to Cooperate with ICE.

2023-2024 General Assembly

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| Committee: | Senate Rules and Operations of the Senate | Date: | May 1, 2024 |
| Introduced by: | Reps. D. Hall, B. Jones, Saine, Carson Smith | Prepared by: | Robert Ryan |
| Analysis of: | Third Edition | | Staff Attorney |

OVERVIEW: *House Bill 10 would do 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 is in custody and that person's 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 (excluding Saturday, Sunday, and holidays) or until ICE resolves the request.*
- *Create reporting requirements related to ICE queries.*
- *Establish a complaint procedure to allow any person to file a complaint with the Attorney General alleging that a jail administrator has failed to comply with the provisions of G.S. 162-62.*

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: **Section 1** of the bill would require 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 offenses would require and ICE inquiry:

- G.S. 90-95- Felonies related to the Controlled Substance Act (Not simple possession or other misdemeanors.)
- 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.

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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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.

- 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.)
- A violation of a Domestic Violence Protective Order.

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

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

- 48 hours, excluding Saturday, Sunday, and holidays, passes from receipt of the ICE detainer and administrative warrant.
- ICE takes custody of the prisoner.
- ICE rescinds the detainer.

An administrator in charge of the confinement facility would be required to adopt a policy for compliance with the above requirements.

Local confinement facilities would be 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.

Section 2 of the bill would create a new statute, G.S. 162-63. This statute defines "administrator" to mean the administrator or other person in charge of any county jail, local confinement facility, district confinement facility, satellite jail, or work release unit. The statute then establishes a complaint procedure to allow any person to file a complaint with the Attorney General alleging that an administrator has failed to comply with the provisions of G.S. 162-62. If the Attorney General determines there is sufficient evidence that the administrator has failed to comply with the requirements of G.S. 162-62, the Attorney General may file a petition for declaratory or injunctive relief in superior court. The court is then authorized to issue an order enjoining the administrator's failure to comply.

EFFECTIVE DATE: This act would become effective July 1, 2024, 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 the 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.

**Susan Sitze, Debbie Griffiths, and Kara McCraw, Staff Attorneys, substantially contributed to this summary.*