

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 370
Second Edition Engrossed 4/3/19
Senate Judiciary Committee Substitute Adopted 6/19/19

Short Title: Require Cooperation with ICE Detainers.

(Public)

Sponsors:

Referred to:

March 18, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE COMPLIANCE WITH IMMIGRATION DETAINERS AND
3 ADMINISTRATIVE WARRANTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 162-62 reads as rewritten:

6 "§ 162-62. Legal status of prisoners.

7 (a) When any person charged with a ~~felony or an impaired driving criminal~~ offense is
8 confined for any period in a county jail, local confinement facility, district confinement facility,
9 ~~or satellite jail/work release unit, satellite jail, or work release unit,~~ the administrator or other
10 person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the
11 United States by an inquiry of the prisoner, or by examination of any relevant documents, or
12 both.

13 (b) If the administrator or other person in charge of the facility is unable to determine if
14 that prisoner is a legal resident or citizen of the United States or its territories, the administrator
15 or other person in charge of the facility holding the ~~prisoner, where possible, prisoner~~ shall make
16 a query of Immigration and Customs Enforcement of the United States Department of Homeland
17 Security. If the prisoner has not been lawfully admitted to the United States, the United States
18 Department of Homeland Security will have been notified of the prisoner's status and
19 confinement at the facility by its receipt of the query from the facility.

20 (c) Nothing in ~~this section~~ subsections (a), (b), or (e) of this section shall be construed to
21 deny bond to a prisoner or to prevent a prisoner from being released from confinement when that
22 prisoner is otherwise eligible for release.

23 (d) Repealed by Session Laws 2010-97, s. 12, effective July 20, 2010.

24 (e) Upon request, the administrator or other person in charge of the facility shall allow
25 an official of Immigration and Customs Enforcement of the United States Department of
26 Homeland Security to interview any person in custody of a county jail, local confinement facility,
27 district confinement facility, satellite jail, or work release unit in person, via telephone, or via
28 other electronic means within 24 hours of receiving the request.

29 (f) When any person charged with a criminal offense is confined for any period in a
30 county jail, local confinement facility, district confinement facility, satellite jail, or work release
31 unit, and the administrator or other person in charge of the facility has been notified that
32 Immigration and Customs Enforcement of the United States Department of Homeland Security
33 has issued a detainer and administrative warrant that reasonably appears to be for the person in
34 custody, the following shall apply:



- 1 (1) Prior to the prisoner's release, and after receipt of the detainer and
2 administrative warrant, or a copy thereof, by the administrator or other person
3 in charge of the facility, the prisoner shall be taken without unnecessary delay
4 before a State judicial official who shall be provided with the detainer and
5 administrative warrant, or a copy thereof.
- 6 (2) The judicial official shall issue an order directing the prisoner be held in
7 custody if the prisoner appearing before the judicial official is the same person
8 subject to the detainer and administrative warrant.
- 9 (3) Unless continued custody of the prisoner is required by other legal process, a
10 prisoner held pursuant to an order issued under this subsection shall be
11 released upon the first of the following conditions:
- 12 a. The passage of 48 hours from receipt of the detainer and administrative
13 warrant.
- 14 b. Immigration and Customs Enforcement of the United States
15 Department of Homeland Security takes custody of the prisoner.
- 16 c. The detainer is rescinded by Immigration and Customs Enforcement
17 of the United States Department of Homeland Security.
- 18 (g) No State or local law enforcement officer or agency shall have criminal or civil
19 liability for any action taken pursuant to an order issued under this section."

20 **SECTION 2.** G.S. 128-16 reads as rewritten:

21 "**§ 128-16. Officers subject to removal; for what offenses.**

22 Any sheriff or police officer shall be removed from office by the judge of the superior court,
23 resident in or holding the courts of the district where said officer is resident upon charges made
24 in writing, and hearing thereunder, for the following causes:

- 25 (1) For willful or habitual neglect or refusal to perform the duties of his or her
26 office.

27 ...

- 28 (7) For willful failure or refusal to comply with any provision of G.S. 162-62."

29 **SECTION 3.** Beginning October 1, 2020, and annually thereafter, the administrator
30 or other person in charge of each county jail, local confinement facility, district confinement
31 facility, or satellite jail or work release unit within the State shall report to the Joint Legislative
32 Oversight Committee on Justice and Public Safety on each of the following with regard to
33 compliance with G.S. 162-62:

- 34 (1) The number of times the facility made a query of Immigration and Customs
35 Enforcement.
- 36 (2) The number of times Immigration and Customs Enforcement responded to a
37 query.
- 38 (3) The number of times Immigration and Customs Enforcement sent a detainer
39 request for a prisoner.
- 40 (4) The number of prisoners taken before a magistrate for purposes of determining
41 if the prisoner was subject to a detainer request.
- 42 (5) The number of times a prisoner was found by a magistrate to be subject to a
43 detainer request.
- 44 (6) The number of times a prisoner was held for 48 hours.
- 45 (7) The number of times a prisoner was held then released following the
46 satisfaction of proof of legal residence or citizenship required by that section.
- 47 (8) The number of times a prisoner was held who would have otherwise been
48 eligible for release from custody.
- 49 (9) The number of times Immigration and Customs Enforcement took custody of
50 a prisoner after notification from the administrator or other person in charge
51 of the facility holding the prisoner.

1 **SECTION 4.** If any provision of this act or the application thereof to any person or
2 circumstance is declared unconstitutional or invalid by the courts, it does not affect the validity
3 of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

4 **SECTION 5.** This act becomes effective 30 days after the bill becomes law.