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SESSION 2019

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HOUSE BILL 370
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PROPOSED SENATE COMMITTEE SUBSTITUTE H370-CSBQ-27 [v.18]
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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) shall be construed to deny bond to
21 a prisoner or to prevent a prisoner from being released from confinement when that prisoner is
22 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23 (d) Repealed by Session Laws 2010-97, s. 12, effective July 20, 2010.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 96 hours after the prisoner is eligible for release.
 - 13 b. Immigration and Customs Enforcement of the United States
 14 Department of Homeland Security takes custody of the prisoner.
 - 15 c. The detainer is rescinded by Immigration and Customs Enforcement
 16 of the United States Department of Homeland Security.
- 17 (g) No State or local law enforcement officer or agency shall have criminal or civil
 18 liability for any action taken pursuant to an order issued under this subsection.

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

20 **"§ 128-16. Officers subject to removal; for what offenses.**

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

- 24 (1) For willful or habitual neglect or refusal to perform the duties of his or her
 25 office.
- 26 ...
- 27 (7) For willful failure or refusal to comply with any provision of G.S. 162-62."

28 **SECTION 3.** Beginning October 1, 2020, and annually thereafter, the administrator

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

- 33 (1) The number of times the facility made a query of Immigration and Customs
 34 Enforcement.
- 35 (2) The number of times Immigration and Customs Enforcement responded to a
 36 query.
- 37 (3) The number of times Immigration and Customs Enforcement sent a detainer
 38 request for a prisoner.
- 39 (4) The number of prisoners taken before a magistrate for purposes of
 40 determining if the prisoner was subject to a detainer request.
- 41 (5) The number of times a prisoner was found by a magistrate to be subject to a
 42 detainer request.
- 43 (6) The number of times a prisoner was held for the full 96 hours.
- 44 (7) The number of times a prisoner was held then released following the
 45 satisfaction of proof of legal residence or citizenship required by that
 46 subsection.
- 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.