GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 10
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PROPOSED SENATE COMMITTEE SUBSTITUTE H10-PCS30450-CE-32

Short Title: Require Sheriffs to Cooperate with ICE. (Public)

Sponsors:

Referred to:

January 26, 2023

A BILL TO BE ENTITLED

AN ACT TO REQUIRE COMPLIANCE WITH IMMIGRATION DETAINERS AND ADMINISTRATIVE WARRANTS, TO REQUIRE CERTAIN REPORTS FROM LOCAL LAW ENFORCEMENT, AND TO AUTHORIZE THE ATTORNEY GENERAL TO SEEK A COURT ORDER FOR FAILURE TO COMPLY.

The General Assembly of North Carolina enacts:

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

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

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

(1) A felony under G.S. 90-95.

(2) A felony under Article 6, Article 7B, Article 10, Article 10A, or Article 13A of Chapter 14 of the General Statutes.

(3) A Class A1 misdemeanor or felony under Article 8 of Chapter 14 of the General Statutes.

(4) Any violation of G.S. 50B-4.1.

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

(b1) When any person charged with a criminal offense is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, and the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant that reasonably appears to be for the person in custody, the following shall apply:

(1) Prior to the prisoner's release, and after receipt of the detainer and administrative warrant, or a copy thereof, by the administrator or other person

in charge of the facility, the prisoner shall be taken without unnecessary delay before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof.

(2) The judicial official shall issue an order directing the prisoner be held in custody if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant.

(3) Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order issued under this subsection shall be released upon the first of the following conditions:

a. The passage of 48 hours, excluding Saturday, Sunday, and holidays, from receipt of the detainer and administrative warrant.

b. Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.

c. The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

(b2) The administrator or other person in charge of any county jail, local confinement facility, district confinement facility, satellite jail, or work release unit shall adopt a policy for compliance with the provisions of subsection (b1) of this section.

(b3) No State or local law enforcement officer or agency shall have criminal or civil liability for action taken pursuant to an order issued under subsection (b1) of this section.

(c) ~~Nothing~~ Except as provided in subsection (b1) of this section, nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.

…

(e) Beginning October 1, 2024, and annually thereafter, the administrator or other person in charge of each county jail, local confinement facility, district confinement facility, or satellite jail or work release unit within the State shall report to the Joint Legislative Oversight Committee on Justice and Public Safety on each of the following with regard to compliance with this section from the preceding July 1 to June 30:

(1) The number of times the facility made a query of Immigration and Customs Enforcement of the United States Department of Homeland Security.

(2) The number of times Immigration and Customs Enforcement of the United States Department of Homeland Security responded to a query.

(3) The number of times Immigration and Customs Enforcement of the United States Department of Homeland Security sent a detainer request for a prisoner.

(4) The number of times a prisoner was held for the full 48 hours.

(5) The number of times a prisoner was held then released following the rescinding of a detainer order by the Immigration and Customs Enforcement of the United States Department of Homeland Security.

(6) The number of times a prisoner was held who would have otherwise been eligible for release from custody.

(7) The number of times Immigration and Customs Enforcement of the United States Department of Homeland Security took custody of a prisoner after notification from the administrator or other person in charge of the facility holding the prisoner."

SECTION 2. Article 4 of Chapter 162 of the General Statutes is amended by adding a new section to read:

"**§ 162-63. Complaint procedure; notice; equitable relief.**

(a) Definition of Administrator. – For the purposes of this section, "administrator" means the administrator or other person in charge of any county jail, local confinement facility, district confinement facility, satellite jail, or work release unit.

(b) Complaint. – Any person, including a federal agency, may file a complaint with the Attorney General alleging that an administrator has failed to comply or is failing to comply with the provisions of G.S. 162-62. The person shall include with the complaint any evidence the person has in support of the complaint.

(c) Document Requests; Duty to Comply. – Any administrator for which the Attorney General has received a complaint pursuant to this section shall comply with any document request, including a request for supporting documents, from the Attorney General relating to the complaint.

(d) Petition. – If the Attorney General determines there is sufficient evidence that an administrator has failed to comply or is failing to comply with the provisions of G.S. 162-62, the Attorney General may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in the Superior Court of Wake County, or in the superior court of the county in which the facility is located, against the administrator.

(e) Relief. – If a court finds an administrator has failed to comply or is failing to comply with the provisions of G.S. 162-62, the court shall enjoin the failure to comply. The court shall have continuing jurisdiction over the parties and subject matter and may enforce its orders with contempt proceedings as provided by law.

(f) Order. – An order approving a consent decree or granting any relief under this section shall include written findings of fact that describe with specificity the existence and nature of the failure to comply.

(g) Appeal. – In an appeal related to a suit brought under this section, the appellate court shall render its final order or judgment with the least possible delay."

SECTION 3. This act becomes effective July 1, 2024, and applies to offenses committed and persons released from custody on or after that date.