



HOUSE BILL 370: Require Cooperation with ICE Detainers.

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 12, 2019
Introduced by:	Reps. D. Hall, Jones, Saine, C. Smith	Prepared by:	Shawn Middlebrooks
Analysis of:	PCS to Second Edition H370-CSBQ-27		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute to House Bill 370 would do the following:*

- *Require confinement facilities to comply with detainers and administrative warrants issued by Immigration and Customs Enforcement (ICE).*
- *Authorize the removal of a sheriff or officer from office for failing to comply with ICE detainers.*
- *Require confinement facilities to submit annual reports to the Joint Legislative Oversight Committee on Justice and Public Safety (JPS Oversight) regarding compliance with ICE detainers.*

CURRENT LAW: Federal law authorizes the *political subdivision of a State* to communicate with the U.S. Attorney General regarding the immigration status of any individual, including reporting knowledge that the person is not lawfully present in the United States, or to otherwise cooperate with the Attorney General in the identification, apprehension, *detention*, or removal of persons not lawfully present in the United States. 18 U.S.C. 1357(g).

In *Arizona v. U.S.*, the Supreme Court of the United States held that "States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." SCOTUS further held that "where Congress occupies an entire field, as it has in the field of alien registration, even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards. *Arizona v. U.S.*, 567 U.S. 387 (2012).

In *Chavez v. Carmichael*, the North Carolina Court of Appeals emphasized that a state court's exercise of jurisdiction to review a federal detainer request and immigration warrant infringes upon the federal government's exclusive federal authority over immigration matters. The Court reiterated that "no state judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or require him to be brought before them." *Chavez v. Carmichael*, 822 S.E.2d 131 (2018).

BILL ANALYSIS:

Section 1 of the PCS to House Bill 370 would:

- Require the administrator or other person is in charge of a confinement facility to investigate the legal status of any person charged with a criminal offense.
- Clarify that an administrator or other person in charge of a confinement facility *shall* query ICE if they are unable to determine the legal status of a prisoner.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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- Require confinement facilities to allow officials from ICE to interview prisoners in person, via telephone, or by other electronic means.
- Require that a prisoner subject to a detainer and administrative warrant be taken before a judicial official without unnecessary delay.
- Require a judicial official to order that a prisoner subject to a detainer and administrative warrant be held in custody.
- Clarify when a prisoner held pursuant to a detainer and administrative warrant may be released.
- Exempt a law enforcement officer or agency from criminal or civil liability for actions taken pursuant to an order under this section.

Section 2 of the PCS to House Bill 370 would authorize the removal of a sheriff or police officer from office for failing or refusing to comply with G.S. 162-62.

Section 3 of the PCS to House Bill 370 would require confinement facilities to submit a report to the Joint JPS Oversight regarding compliance with G.S. 162-62.

EFFECTIVE DATE: This bill is effective 30 days after the bill becomes law.