



# SENATE BILL 101: Require Cooperation with ICE 2.0.

2021-2022 General Assembly

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<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> March 10, 2021
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<b>Analysis of:</b> Second Edition	Staff Attorney

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## OVERVIEW: *Senate Bill 101 would:*

- *Require that ICE is queried when an individual charged with certain offenses is in custody and 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 or until ICE resolves the request.*
- *Create a Class 3 Misdemeanor for willful failure to query ICE or detain, as required.*
- *Create reporting requirements related to ICE queries.*

## CURRENT LAW:

**Article I, § 8, of the U.S. Constitution** authorizes the federal government to regulate uniform laws related to immigration.

**8 U.S.C. § 1357(g)** authorizes state and local law enforcement agencies to enter into a Memorandum of Agreement with Immigration Customs Enforcement (ICE) to perform immigration law enforcement functions under the supervision of ICE officers.

**G.S. 128-1.1(c1)** allows State and local law enforcement officers in North Carolina to perform functions of a federal officer under 8 U.S.C. § 1357(g) if the agency has entered into a Memorandum of Agreement with the federal government.

**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.
- To send a query, where possible, to ICE if the prisoner's status as a legal resident of the United States cannot be determined.

The **North Carolina Supreme Court** has found that a State court lacks jurisdiction to make a determination regarding the validity of any immigration-related process such as an arrest warrant or ICE detainer by an entity operating under a 287(g) agreement with the federal government given that the custodian claims to be operating as a de facto immigration officer in such circumstances. *Chavez v. McFadden*, (June 5, 2020)

**ANALYSIS: Section 1(a) would** require the administrator or other person in charge of the confinement facility, to query ICE if unable to determine if a person in custody and charged with certain offenses, is a legal resident of the U.S.

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The following types of offenses would trigger an ICE query:

G.S. 90-95- Felonies related to the Controlled Substance Act.

Article 6 of Chapter 14- Homicide offenses.

Article 7B of Chapter 14- Rape and Other Sex Offenses.

Article 8 of Chapter 14- Assaults.

Article 10A of Chapter 14- Human Trafficking offenses.

Article 13A of Chapter 14- Offenses in violation of the North Carolina Criminal Gang Suppression Act.

## Section 1(a) would also:

- Create a process for a judicial official for every individual (i) in custody, and (ii) subject to an ICE detainer or administrative warrant.
- Require a judicial official to order that a prisoner subject to a detainer and administrative warrant be held in custody for 48 hours or until ICE proceeds, whichever occurs first.
- Create a Class 3 Misdemeanor for willful failing to query ICE or willfully failing to hold an inmate pursuant to a judicial order.

**Section 1(b) would** create an annual reporting requirement for local confinement facilities to make the General Assembly aware of ICE queries, related releases, and outcomes for the preceding July 1-June 30.

**EFFECTIVE DATE:** This act would become effective December 1, 2021, 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 an agency to 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.

ICE currently lists 15 local law enforcement agencies in North Carolina as participating entities in the 287(g) program:

<https://www.ice.gov/identify-and-arrest/287g>