



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2114

by Rep. Allen Skillicorn

SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963. Provides that a peace officer may not stop a motor vehicle or conduct a search of a business or residence solely to enforce a federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act, unless the officer is acting: (1) at the request of, and providing assistance to, an appropriate federal law enforcement officer; or (2) under the terms of an agreement between the law enforcement agency employing the officer and the federal government under which the agency receives delegated authority to enforce federal law relating to immigrants or immigration. Provides that a peace officer may arrest an undocumented person only if the officer is acting under the authority granted under the Code. Establishes procedures that a law enforcement agency must follow related to arrestees subject to immigration detainers. Provides that any person may file a complaint with the Attorney General if the person offers evidence to support an allegation that a unit of local government has adopted, enforced, or endorsed a policy under which the unit of local government prohibits or discourages the enforcement of immigration laws or that the unit of local government, by consistent actions, prohibits or discourages the enforcement of those laws. Provides for equitable relief. Preempts home rule. Amends the State Comptroller Act. Provides that a unit of local government may not receive State grant funds if the unit of local government adopts, enforces, or endorses a policy under which the unit of local government prohibits or discourages the enforcement of immigration laws or, by consistent actions, prohibits or discourages the enforcement of immigration laws. Repeals the Illinois TRUST Act.

LRB101 06285 SLF 51311 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 (5 ILCS 805/Act rep.)

5 Section 5. The Illinois TRUST Act is repealed.

6 Section 10. The State Comptroller Act is amended by adding
7 Section 9.07 as follows:

8 (15 ILCS 405/9.07 new)

9 Sec. 9.07. Denial of State grant funds.

10 (a) A unit of local government as defined in Section 107B-1
11 of the Code of Criminal Procedure of 1963 may not receive State
12 grant funds if the unit of local government adopts, enforces,
13 or endorses a policy under which the unit of local government
14 prohibits or discourages the enforcement of immigration laws
15 or, by consistent actions, prohibits or discourages the
16 enforcement of immigration laws.

17 (b) State grant funds for a unit of local government shall
18 be denied for the State fiscal year following the year in which
19 a final judicial determination in an action brought under
20 Section 107B-40 of the Code of Criminal Procedure of 1963 is
21 made that the unit of local government has intentionally
22 prohibited or discouraged the enforcement of immigration laws.

1 (c) The Comptroller shall adopt rules to implement this
2 Section uniformly among the State agencies from which State
3 grant funds are distributed to a unit of local government.

4 (d) A unit of local government that has not violated
5 Section 107B-30 of the Code of Criminal Procedure of 1963 may
6 not be denied State grant funds, regardless of whether the unit
7 of local government is a part of another unit of local
8 government that is in violation of that Section.

9 Section 15. The Code of Criminal Procedure of 1963 is
10 amended by adding Article 107B as follows:

11 (725 ILCS 5/Art. Art. 107B heading new)

12 ARTICLE Art. 107B. ENFORCEMENT OF FEDERAL IMMIGRATION LAW

13 (725 ILCS 5/107B-1 new)

14 Sec. 107B-1. Definitions. In this Article:

15 "Immigration detainer" means a United States Department of
16 Homeland Security Form I-247 or a similar or successor form
17 that requests a unit of local government to maintain temporary
18 custody of an alien for the federal government.

19 "Immigration laws" means the laws of this State or federal
20 law relating to immigrants or immigration, including the
21 federal Immigration and Nationality Act (8 U.S.C. Section 1101
22 et seq.).

23 "Lawful detention" means the detention of a person by a

1 unit of local government for the investigation of a criminal
2 offense. "Lawful detention" excludes a detention if the sole
3 reason for the detention is that the person:

4 (1) is a victim of or witness to a criminal offense; or

5 (2) is reporting a criminal offense.

6 "Policy" includes a formal, written rule, order,
7 ordinance, or policy and an informal, unwritten policy.

8 "Unit of local government" has the meaning ascribed to the
9 term in Section 1 of Article VII of the Illinois Constitution
10 and includes a home rule unit.

11 (725 ILCS 5/107B-5 new)

12 Sec. 107B-5. Enforcement of federal immigration law.

13 (a) A peace officer may not stop a motor vehicle or conduct
14 a search of a business or residence solely to enforce a federal
15 law relating to immigrants or immigration, including the
16 federal Immigration and Nationality Act (8 U.S.C. Section 1101
17 et seq.), unless the officer is acting:

18 (1) at the request of, and providing assistance to, an
19 appropriate federal law enforcement officer; or

20 (2) under the terms of an agreement between the law
21 enforcement agency employing the officer and the federal
22 government under which the agency receives delegated
23 authority to enforce federal law relating to immigrants or
24 immigration.

25 (b) A peace officer may arrest an undocumented person only

1 if the officer is acting under the authority granted under
2 Section 107-2 of this Code.

3 (725 ILCS 5/107B-10 new)

4 Sec. 107B-10. Duties related to certain arrested persons.

5 (a) If a person is arrested and is unable to provide proof
6 of the person's lawful presence in the United States, not later
7 than 48 hours after the person is arrested and before the
8 person is released on bond, a law enforcement agency performing
9 the booking process shall:

10 (1) review any information available from the federal
11 Priority Enforcement Program operated by United States
12 Immigration and Customs Enforcement or a successor
13 program; and

14 (2) if information obtained under paragraph (1)
15 reveals that the person is not a citizen or national of the
16 United States and is unlawfully present in the United
17 States according to the terms of the federal Immigration
18 and Nationality Act (8 U.S.C. Section 1101 et seq.):

19 (A) provide notice of that fact to the judge
20 authorized to grant or deny the person's release on
21 bail under Article 110; and

22 (B) record that fact in the person's case file.

23 (b) A law enforcement agency is not required to perform a
24 duty imposed by subsection (a) with respect to a person who is
25 transferred to the custody of the agency by another law

1 enforcement agency if the transferring agency performed that
2 duty before transferring custody of the person.

3 (c) A judge who receives notice of a person's immigration
4 status under this Article shall record that status in the court
5 record.

6 (725 ILCS 5/107B-15 new)

7 Sec. 107B-15. Duties related to immigration detainer.

8 (a) A law enforcement agency that has custody of a person
9 subject to an immigration detainer issued by United States
10 Immigration and Customs Enforcement shall:

11 (1) provide to the judge authorized to grant or deny
12 the person's release on bail under Article 110 notice that
13 the person is subject to an immigration detainer;

14 (2) record in the person's case file that the person is
15 subject to an immigration detainer; and

16 (3) comply with, honor, and fulfill the requests made
17 in the detainer.

18 (b) A law enforcement agency is not required to perform a
19 duty imposed by paragraph (1) or (2) of subsection (a) with
20 respect to a person who is transferred to the custody of the
21 agency by another law enforcement agency if the transferring
22 agency performed that duty before transferring custody of the
23 person.

24 (c) A judge who receives notice that a person is subject to
25 a detainer under this Article shall record that fact in the

1 court record, regardless of whether the notice is received
2 before or after a judgment in the case.

3 (725 ILCS 5/107B-20 new)

4 Sec. 107B-20. Release to federal custody.

5 (a) This Article applies only to a criminal case in which:

6 (1) the judgment requires the defendant to be confined
7 in a secure correctional facility; and

8 (2) the judge:

9 (A) indicates in the record under this Article that
10 the defendant is subject to an immigration detainer; or

11 (B) otherwise indicates in the record that the
12 defendant is subject to a transfer into federal
13 custody.

14 (b) In a criminal case described in subsection (a), the
15 judge shall, at the time of pronouncement of a sentence of
16 confinement, issue an order requiring the secure correctional
17 facility in which the defendant is to be confined to reduce the
18 defendant's sentence by a period of not more than 7 days on the
19 facility's determination that the reduction in sentence will
20 facilitate the seamless transfer of the defendant into federal
21 custody. In this subsection (b), "secure correctional
22 facility" means a municipal or county jail; or a facility
23 operated by or under a contract with the Department of
24 Corrections.

25 (c) If the applicable information described in

1 subparagraph (a)(2)(A) or (B) is not available at the time
2 sentence is pronounced in the case, the judge shall issue the
3 order described in subsection (b) as soon as the information
4 becomes available.

5 (725 ILCS 5/107B-25 new)

6 Sec. 107B-25. Applicability of Article.

7 (a) This Article does not apply to:

8 (1) a school district or open-enrollment charter
9 school;

10 (2) the release of information contained in education
11 records of an educational agency or institution, except in
12 conformity with the Family Educational Rights and Privacy
13 Act of 1974 (20 U.S.C. Section 1232g).

14 (b) This Article does not apply to a hospital or hospital
15 district created under the Hospital District Law to the extent
16 that the hospital or hospital district is providing access to
17 or delivering medical or health care services as required under
18 the following applicable federal or State laws:

19 (1) 42 U.S.C. Section 1395dd;

20 (2) 42 U.S.C. Section 1396b(v);

21 (3) the Community Benefits Act;

22 (4) Section 6.08 of the Hospital Licensing Act;

23 (5) Section 2-114 of the MC/DD Act;

24 (6) Section 2-114 of the Nursing Home Care Act;

25 (7) Section 2-114 of the ID/DD Community Care Act; or

1 (8) Section 3-114 of the Specialized Mental Health
2 Rehabilitation Act of 2013.

3 (c) Subsection (b) does not exclude the application of this
4 Article to a sworn peace officer employed by a hospital or
5 hospital district subject to subsection (b).

6 (725 ILCS 5/107B-30 new)

7 Sec. 107B-30. Unit of local government policy regarding
8 immigration enforcement.

9 (a) A unit of local government may not adopt, enforce, or
10 endorse a policy under which the unit of local government
11 prohibits or discourages the enforcement of immigration laws.

12 (b) In compliance with subsection (a), a unit of local
13 government may not prohibit or discourage a person who is a
14 sworn peace officer, a corrections officer, a booking clerk, a
15 judge, or a State's Attorney, or other prosecuting attorney and
16 who is employed by or otherwise under the direction or control
17 of the unit of local government from doing any of the
18 following:

19 (1) inquiring into the immigration status of a person
20 under a lawful detention or under arrest;

21 (2) with respect to information relating to the
22 immigration status, lawful or unlawful, of any person under
23 a lawful detention or under arrest:

24 (A) sending the information to or requesting or
25 receiving the information from United States

1 Citizenship and Immigration Services or United States
2 Immigration and Customs Enforcement, including
3 information regarding a person's place of birth;

4 (B) maintaining the information; or

5 (C) exchanging the information with another unit
6 of local government or a federal or State governmental
7 unit;

8 (3) assisting or cooperating with a federal
9 immigration officer as reasonable or necessary,
10 including providing enforcement assistance; or

11 (4) permitting a federal immigration officer to
12 enter and conduct enforcement activities at a
13 municipal or county jail to enforce federal
14 immigration laws.

15 (725 ILCS 5/107B-35 new)

16 Sec. 107B-35. Discrimination prohibited. A unit of local
17 government or a person employed by or otherwise under the
18 direction or control of the unit of local government may not
19 consider race, color, language, or national origin while
20 enforcing immigration laws except to the extent permitted by
21 the United States Constitution or the Illinois Constitution.

22 (725 ILCS 5/107B-40 new)

23 Sec. 107B-40. Complaint; equitable relief.

24 (a) Any person, including the federal government, may file

1 a complaint with the Attorney General if the person offers
2 evidence to support an allegation that a unit of local
3 government has adopted, enforced, or endorsed a policy under
4 which the unit of local government prohibits or discourages the
5 enforcement of immigration laws or that the unit of local
6 government, by consistent actions, prohibits or discourages
7 the enforcement of those laws. The person must include with the
8 complaint the evidence the person has that supports the
9 complaint.

10 (b) A unit of local government for which the Attorney
11 General has received a complaint under subsection (a) shall
12 comply with a document request, including a request for
13 supporting documents, from the Attorney General related to the
14 complaint.

15 (c) If the Attorney General determines that a complaint
16 filed under subsection (a) against a unit of local government
17 is valid, the Attorney General shall, not later than 10 days
18 after the date of the determination, provide written
19 notification to the unit of local government that:

20 (1) the complaint has been filed;

21 (2) the Attorney General has determined that the
22 complaint is valid;

23 (3) the Attorney General may file an action to enjoin
24 the violation if the unit of local government does not come
25 into compliance with the requirements of Section 107B-30 on
26 or before 90 days after the date the notification is

1 provided; and

2 (4) the unit of local government shall be denied State
3 grant funds for the State fiscal year following the year in
4 which a final judicial determination in an action brought
5 under subsection (e) is made.

6 (d) Not later than the 30th day after the day a unit of
7 local government receives written notification under
8 subsection (c), the unit of local government shall provide the
9 Attorney General with a copy of:

10 (1) the unit of local government's written policies
11 related to immigration enforcement actions;

12 (2) each immigration detainer received by the unit of
13 local government from the United States Department of
14 Homeland Security; and

15 (3) each response sent by the unit of local government
16 for a detainer described in paragraph (2) of this
17 subsection (d).

18 (e) If the Attorney General determines that a complaint
19 filed under subsection (a) against a unit of local government
20 is valid, the Attorney General may file a petition for a writ
21 of mandamus or apply for other appropriate equitable relief in
22 a circuit court in a county in which the principal office of
23 the unit of local government is located to compel the unit of
24 local government that adopts, enforces, or endorses a policy
25 under which the unit of local government prohibits or
26 discourages the enforcement of immigration laws or that, by

1 consistent actions, prohibits or discourages the enforcement
2 of those laws to comply with Section 107B-30. The Attorney
3 General may recover reasonable expenses incurred in obtaining
4 relief under this subsection, including court costs,
5 reasonable attorney's fees, investigative costs, witness fees,
6 and deposition costs.

7 (f) An appeal of a suit brought under subsection (e) is
8 governed by Illinois Supreme Court Rule 311(b) for
9 discretionary acceleration of appeals. The Appellate Court
10 shall render its final order or judgment with the least
11 possible delay.

12 (725 ILCS 5/107B-45 new)

13 Sec. 107B-45. Home rule. The adoption, enforcement, or
14 endorsement of a policy under which a unit of local government
15 enforces immigration laws, is an exclusive power and function
16 of the State. A home rule unit may not regulate enforcement of
17 immigration laws in a manner inconsistent with this Article and
18 any ordinance or local law contrary to this Article is declared
19 void. This is a denial and limitation of home rule powers and
20 functions under subsection (h) of Section 6 of Article VII of
21 the Illinois Constitution.

1 INDEX

2 Statutes amended in order of appearance

3 5 ILCS 805/Act rep.

4 15 ILCS 405/9.07 new

5 725 ILCS 5/Art. Art. 107B

6 heading new

7 725 ILCS 5/107B-1 new

8 725 ILCS 5/107B-5 new

9 725 ILCS 5/107B-10 new

10 725 ILCS 5/107B-15 new

11 725 ILCS 5/107B-20 new

12 725 ILCS 5/107B-25 new

13 725 ILCS 5/107B-30 new

14 725 ILCS 5/107B-35 new

15 725 ILCS 5/107B-40 new

16 725 ILCS 5/107B-45 new