

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 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Article 124C as follows:

6 (725 ILCS 5/Art. 124C heading new)

7 ARTICLE 124C. SMART ENFORCEMENT LAW

8 (725 ILCS 5/124C-1 new)

9 Sec. 124C-1. Short title. This Article may be cited as the
10 Smart Enforcement Law.

11 (725 ILCS 5/124C-5 new)

12 Sec. 124C-5. Preamble and findings.

13 (a) The State of Illinois is committed to upholding our
14 criminal laws and in imposing appropriate penalties for those
15 convicted of criminal offenses. In the case of noncitizens of
16 the United States, the consequences of criminal convictions may
17 include removal from the United States by U.S. Immigration and
18 Customs Enforcement (ICE).

19 (b) In 2007, in enacting Public Law 110-161, 121 Stat.
20 1844, 2365, Congress provided initial appropriations to
21 "improve and modernize efforts to identify aliens convicted of

1 a crime, sentenced to imprisonment, and who may be deportable,
2 and remove them from the United States once they are judged
3 deportable". ICE has used this funding to create the "Secure
4 Communities" program, through which ICE receives and reviews
5 fingerprints that local police take for criminal suspects upon
6 booking.

7 (c) Illinois participates in the "Secure Communities"
8 pursuant to a Memorandum of Agreement entered into by ICE and
9 the Illinois State Police on November 2, 2009. ICE is
10 implementing the program in counties throughout Illinois and
11 intends to cover the entire nation by 2013.

12 (d) Contrary to the goal, stated by Congress and affirmed
13 by ICE, of identifying and removing noncitizens convicted of
14 crimes, "Secure Communities" has largely been identifying
15 individuals with no criminal convictions for ICE arrest and
16 removal. Through February 2011, 46.5% of individuals arrested
17 by ICE under "Secure Communities" had no convictions.

18 (e) "Secure Communities" imposes additional costs upon
19 county jails and other local law enforcement by requiring that
20 the jails hold individuals who may otherwise be released. The
21 costs of these holds are borne by local taxpayers.

22 (f) By subjecting individuals with no criminal convictions
23 to removal, "Secure Communities" disrupts families and
24 communities, encourages racial and ethnic profiling, burdens
25 taxpayers, and poses harm to our State as a whole.

26 (g) Because the "Secure Communities" program is straying so

1 far from its stated goals, at significant cost to families and
2 communities, the State must monitor and review the impact of
3 this program to determine whether it is indeed benefiting the
4 people of Illinois.

5 (h) ICE itself has been unclear and uncertain as to whether
6 counties and local jurisdictions can choose not to participate
7 in "Secure Communities", even if they believe that the program
8 would harm their communities. The State should accordingly
9 enable counties and local jurisdictions to refuse to
10 participate should they choose to do so.

11 (725 ILCS 5/124C-10 new)

12 Sec. 124C-10. Participation in the U.S. Immigration and
13 Customs Enforcement "Secure Communities" Program.

14 (a) This Section pertains to the U.S. Immigration and
15 Customs Enforcement (ICE) "Secure Communities" Program, in
16 which Illinois participates pursuant to a "Memorandum of
17 Agreement Between the U.S. Department of Homeland Security
18 Immigration and Customs Enforcement and the Illinois State
19 Police" entered into on November 2, 2009.

20 (b) The Illinois State Police shall identify a means by
21 which a local law enforcement agency may request to withhold
22 its participation in the "Secure Communities" program, and
23 shall facilitate any such request to the appropriate federal
24 agencies.

25 (c) (1) Any county participating in the "Secure

1 Communities" program shall submit to the Illinois State Police,
2 in a form and manner to be determined by the Illinois State
3 Police, the following information:

4 (A) the number of individuals held by the county's jail
5 during each calendar month pursuant to a detainer issued by
6 ICE requesting that the jail hold an individual until ICE
7 takes that individual into its custody;

8 (B) with respect to those individuals subject to such
9 detainers:

10 (i) the charge or charges for which the individual
11 was arrested;

12 (ii) to the extent known by the county, whether the
13 arrest occurred after a traffic stop, after a Terry
14 stop, pursuant to an arrest warrant, or under other
15 circumstances relating to warrantless arrests;

16 (iii) the charge or charges if any for which the
17 individual was arraigned and prosecuted;

18 (iv) the disposition of the criminal charge or
19 charges described in clause (iii) of this paragraph
20 (1), and the date of the disposition;

21 (v) whether bond was posted for the individual, and
22 if so, the date on which bond was posted;

23 (vi) the length of time (in days) the individual
24 was held in the jail's custody;

25 (vii) whether ICE took the individual into
26 custody, and if so, the date on which ICE took custody;

1 (viii) the cost incurred by the county for holding
2 these individuals subject to the ICE detainer beyond
3 the date on which bond was posted or they otherwise
4 became subject to release, and whether the county
5 requested reimbursement for any federal agency to
6 cover expenses arising from the ICE detainers;

7 (ix) the individual's national origin, if
8 voluntarily reported by the individual, provided that
9 nothing in this reporting requirement shall be
10 construed to require that the county determine or
11 inquire into the national origin of any such
12 individuals, or to authorize any law enforcement
13 agencies to compel such individuals to provide this
14 information;

15 (x) to the extent known by the county, whether the
16 detainer arose pursuant to the "Secure Communities"
17 program, the ICE Criminal Alien Program, an "immigrant
18 alien query" requested by the arresting law
19 enforcement agency, or other means.

20 (2) The Illinois State Police shall arrange for the data
21 collected pursuant to paragraph (1) of this subsection (c) to
22 be made available to the public.

23 (d) As a condition for its continued participation in the
24 "Secure Communities" program, the State of Illinois shall
25 modify its Memorandum of Agreement with ICE to provide that, in
26 line with ICE's Congressional authorization of identifying

1 "aliens convicted of a crime, sentenced to imprisonment, and
2 who may be deportable," Public Law 110-161, 121 Stat. 1844,
3 2365 (2007), no Illinois arrest record information regarding
4 any individual may be analyzed by ICE through the "Secure
5 Communities" program unless such individual has been convicted
6 of a criminal offense.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.