



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2942

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.

LRB100 09998 RLC 20170 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 Section 5. The State Comptroller Act is amended by adding
5 Section 9.07 as follows:

6 (15 ILCS 405/9.07 new)

7 Sec. 9.07. Denial of State grant funds.

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

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

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

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

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

8 (725 ILCS 5/Art. Art. 107B heading new)

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

10 (725 ILCS 5/107B-1 new)

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

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

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

20 "Lawful detention" means the detention of a person by a
21 unit of local government for the investigation of a criminal
22 offense. The term excludes a detention if the sole reason for
23 the detention is that the person:

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

2 (2) is reporting a criminal offense.

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

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

8 (725 ILCS 5/107B-5 new)

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

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

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

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

22 (b) A peace officer may arrest an undocumented person only
23 if the officer is acting under the authority granted under
24 Section 107-2 of this Code.

1 (725 ILCS 5/107B-10 new)

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

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

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

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

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

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

21 (b) A law enforcement agency is not required to perform a
22 duty imposed by subsection (a) of this Section with respect to
23 a person who is transferred to the custody of the agency by
24 another law enforcement agency if the transferring agency
25 performed that duty before transferring custody of the person.

26 (c) A judge who receives notice of a person's immigration

1 status under this Article shall record that status in the court
2 record.

3 (725 ILCS 5/107B-15 new)

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

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

8 (1) provide to the judge authorized to grant or deny
9 the person's release on bail under Article 110 of this Code
10 notice that the person is subject to an immigration
11 detainer;

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

14 (3) comply with, honor, and fulfill the requests made
15 in the detainer.

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

21 (c) A judge who receives notice that a person is subject to
22 a detainer under this Article shall record that fact in the
23 court record, regardless of whether the notice is received
24 before or after a judgment in the case.

1 (725 ILCS 5/107B-20 new)

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

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

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

6 (2) the judge:

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

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

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

23 (c) If the applicable information described in
24 subparagraph (a)(2)(A) or (B) is not available at the time
25 sentence is pronounced in the case, the judge shall issue the
26 order described in subsection (b) of this Section as soon as

1 the information becomes available.

2 (725 ILCS 5/107B-25 new)

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

4 (a) This Article does not apply to:

5 (1) a school district or open-enrollment charter
6 school;

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

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

16 (1) 42 U.S.C. Section 1395dd;

17 (2) 42 U.S.C. Section 1396b(v);

18 (3) the Community Benefits Act;

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

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

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

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

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

25 (c) Subsection (b) of this Section does not exclude the

1 application of this Article to a sworn peace officer employed
2 by a hospital or hospital district subject to subsection (b) of
3 this Section.

4 (725 ILCS 5/107B-30 new)

5 Sec. 107B-30. Unit of local government policy regarding
6 immigration enforcement.

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

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

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

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

22 (A) sending the information to or requesting or
23 receiving the information from United States
24 Citizenship and Immigration Services or United States
25 Immigration and Customs Enforcement, including

1 information regarding a person's place of birth;

2 (B) maintaining the information; or

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

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

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

13 (725 ILCS 5/107B-35 new)

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

20 (725 ILCS 5/107B-40 new)

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

22 (a) Any person, including the federal government, may file
23 a complaint with the Attorney General if the person offers
24 evidence to support an allegation that a unit of local

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

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

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

18 (1) the complaint has been filed;

19 (2) the Attorney General has determined that the
20 complaint is valid;

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

26 (4) the unit of local government shall be denied State

1 grant funds for the State fiscal year following the year in
2 which a final judicial determination in an action brought
3 under subsection (e) of this Section is made.

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

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

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

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

16 (e) If the Attorney General determines that a complaint
17 filed under subsection (a) of this Section against a unit of
18 local government is valid, the Attorney General may file a
19 petition for a writ of mandamus or apply for other appropriate
20 equitable relief in a circuit court in a county in which the
21 principal office of the unit of local government is located to
22 compel the unit of local government that adopts, enforces, or
23 endorses a policy under which the unit of local government
24 prohibits or discourages the enforcement of immigration laws or
25 that, by consistent actions, prohibits or discourages the
26 enforcement of those laws to comply with Section 107B-30 of

1 this Code. The Attorney General may recover reasonable expenses
2 incurred in obtaining relief under this subsection, including
3 court costs, reasonable attorney's fees, investigative costs,
4 witness fees, and deposition costs.

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

10 (725 ILCS 5/107B-45 new)

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

1 INDEX

2 Statutes amended in order of appearance

3 15 ILCS 405/9.07 new

4 725 ILCS 5/Art. Art. 107B

5 heading new

6 725 ILCS 5/107B-1 new

7 725 ILCS 5/107B-5 new

8 725 ILCS 5/107B-10 new

9 725 ILCS 5/107B-15 new

10 725 ILCS 5/107B-20 new

11 725 ILCS 5/107B-25 new

12 725 ILCS 5/107B-30 new

13 725 ILCS 5/107B-35 new

14 725 ILCS 5/107B-40 new

15 725 ILCS 5/107B-45 new