



Sen. John J. Cullerton

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1 AMENDMENT TO SENATE BILL 1011

2 AMENDMENT NO. _____. Amend Senate Bill 1011 by replacing
3 everything after the enacting clause with the following:

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. ILLINOIS TRUST ACT.

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

9 Sec. 124C-1. Short title. This Article may be cited as the
10 Illinois TRUST Act.

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

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

13 (a) The State of Illinois is committed to fair and equal
14 treatment of all individuals in the enforcement of its criminal

1 laws and the administration of its criminal justice system.

2 (b) Local law enforcement agencies rely on the trust of the
3 communities they serve so that all residents will feel safe in
4 reporting crimes and aiding the prosecution of suspects.

5 (c) The Illinois criminal justice system has become
6 increasingly entangled in enforcement of federal civil
7 immigration laws, and has been used by U.S. Immigration and
8 Customs Enforcement (ICE) as a vehicle for identifying
9 individuals whom that agency can target for detention and
10 removal from the United States.

11 (d) As documented by the University of Illinois Chicago,
12 entanglement of law enforcement agencies in federal
13 immigration enforcement erodes the public trust that those
14 agencies depend on to secure accurate reporting of criminal
15 activity and to prevent and solve crimes. Community policing
16 efforts are hindered when immigrant residents who are victims
17 of or witnesses to crime, including domestic violence, are less
18 likely to report crime or cooperate with law enforcement out of
19 fear that any contact with law enforcement could result in
20 deportation. Deterred from reporting to or cooperating with
21 local law enforcement, victims or witnesses may never learn
22 about or pursue opportunities for lawful status such as U and T
23 nonimmigrant visas, which are intended in part to encourage
24 people to report crimes.

25 (e) While several law enforcement agencies in Illinois have
26 distanced themselves from federal immigration authorities

1 through trust-building measures such as not inquiring about
2 immigration status or reporting immigration-related
3 information, information-sharing mechanisms such as the
4 federal "Secure Communities" program and ICE access to the
5 State Law Enforcement Agencies Database System (LEADS) still
6 entangle local law enforcement in immigration enforcement.

7 (f) Through programs like "Secure Communities", ICE
8 identifies individuals in the criminal justice system against
9 whom it can issue immigration detainers. Immigration detainers
10 are voluntary requests from ICE to law enforcement agencies to
11 hold individuals in local jails for additional time beyond when
12 they would be eligible for release in a criminal matter. While
13 an immigration detainer requests that a law enforcement agency
14 detain an individual for civil immigration purposes, the
15 detainer does not confer civil immigration arrest authority,
16 and indeed State and local law enforcement have no arrest
17 authority for civil immigration matters.

18 (g) Between October 2011 and August 2013, ICE transmitted
19 8,100 immigration detainers to police departments, jails,
20 prisons, and other institutions in Illinois. Of these, 5,629
21 (69%) targeted individuals with no criminal convictions, and
22 another 1,809 (22%) targeted individuals convicted of only
23 minor offenses. Nationwide, roughly half of all immigration
24 detainers have targeted individuals with no criminal
25 convictions. Despite explicit guidance issued by ICE in
26 December 2012 restricting issuance of detainers, this

1 disturbing pattern of targeting non-criminals has persisted,
2 according to ICE data analyzed by the Transactional Records
3 Access Center at Syracuse University.

4 (h) The State of Illinois notified ICE on May 4, 2011, of
5 its withdrawal from the Memorandum of Agreement under which the
6 State participated in the "Secure Communities" program. In
7 issuing its notice, the State cited concerns over the high
8 percentage of individuals whom ICE was arresting and deporting
9 under the program who had no criminal history. ICE responded on
10 August 5, 2011, by voiding the State's Memorandum of Agreement
11 and compelling the State to participate in "Secure
12 Communities." ICE ultimately activated the program throughout
13 Illinois as of January 22, 2013.

14 (i) As of November 30, 2013, nearly half (48%) of all
15 individuals from Illinois whom ICE has removed under "Secure
16 Communities" either have no criminal convictions or only a
17 single misdemeanor offense. More than 15% have never been
18 convicted of any offense. Nationwide, 20% of individuals
19 removed by ICE under "Secure Communities" have no criminal
20 convictions, and another 30% have convictions only for minor
21 offenses.

22 (j) By subjecting individuals with no criminal history or
23 only minor convictions to removal, ICE's use of immigration
24 detainers and programs like "Secure Communities" disrupt
25 families and communities, encourage racial and ethnic
26 profiling, burden taxpayers, and pose harm to our State as a

1 whole.

2 (k) Unlike criminal detainers, which comply with
3 fundamental protections under the Fourth Amendment to the U.S.
4 Constitution and Article I, Section 6 of the Illinois
5 Constitution, immigration detainers do not require a showing of
6 probable cause or any of the other procedural protections that
7 undergird the right to be free from unreasonable searches or
8 seizures. Detainers can result in persons being held and
9 transferred into immigration detention without regard to
10 whether their arrest is the result of a mistake, or merely a
11 routine practice of questioning individuals involved in a
12 dispute without pressing charges. As a result, immigration
13 detainers have erroneously been placed on United States
14 citizens and on immigrants who are not deportable.

15 (l) State and local law enforcement agencies are not
16 reimbursed or indemnified by the federal government for the
17 full cost of responding to a detainer, which can include, but
18 is not limited to, extended detention time, the administrative
19 costs of tracking and responding to detainers, and costs or
20 liability incurred as a result of wrongful detainers. In
21 particular, law enforcement agencies must pay for the time
22 during which immigrants, who are deterred from posting bond by
23 immigration detainers, remain in law enforcement custody while
24 awaiting their day in court. Several recent federal court
25 decisions have ruled that local law enforcement agencies that
26 hold individuals solely based on immigration detainers can be

1 held liable for violations of the individuals' constitutional
2 rights. All of these costs are borne by local taxpayers.

3 (m) Like immigration detainers, ICE administrative
4 warrants also fail to comply with the same fundamental
5 protections under the Fourth Amendment to the U.S. Constitution
6 and Article I, Section 6 of the Illinois Constitution. As with
7 immigration detainers, administrative warrants are voluntary
8 requests that generally do not confer arrest authority on State
9 and local law enforcement, and there is no independent State
10 arrest authority for civil immigration matters under an
11 administrative warrant. Accordingly, there is no State or local
12 law enforcement arrest authority for the majority of
13 immigration administrative warrants in the FBI's National
14 Crime Information Center (NCIC) database, which local law
15 enforcement agencies routinely use. As with immigration
16 detainers, State and local law enforcement are not reimbursed
17 for the significant costs of honoring administrative warrants.
18 Administrative warrants sow the same distrust of law
19 enforcement and result in similar societal costs as immigration
20 detainers.

21 (n) It is the intent of the Illinois General Assembly that
22 this Act shall not be construed as providing, expanding, or
23 ratifying the legal authority for any State or local law
24 enforcement agency to detain an individual on an immigration
25 detainer or administrative warrant.

1 (725 ILCS 5/124C-10 new)

2 Sec. 124C-10. Definitions.

3 "Administrative warrant" means an immigration warrant of
4 arrest, order to detain or release aliens, notice of custody
5 determination, notice to appear, removal order, warrant of
6 removal, or any other document, issued by an immigration agent
7 that can form the basis for an individual's arrest or detention
8 for a civil immigration enforcement purpose. This definition
9 does not include any warrants issued by a criminal court upon a
10 determination of probable cause and in compliance with the
11 requirements of the Fourth Amendment to the U.S. Constitution
12 and Article I, Section 6 of the Illinois Constitution.

13 "Certification" means any law enforcement certification or
14 statement required by federal immigration law including, but
15 not limited to the information required by 8 U.S.C. § 1184(p)
16 and 8 U.S.C. § 1184(o), including current USCIS Form I-918,
17 Supplement B and USCIS Form I-914, Supplement B, respectively,
18 and any successor forms.

19 "Certifying agency" means a State or local law enforcement
20 agency, prosecutor, judge, or other authority, that has
21 responsibility for the investigation or prosecution of
22 criminal activity. This definition includes agencies that have
23 criminal investigative jurisdiction in their respective areas
24 of expertise, including but not limited to the Illinois
25 Department of Labor, Illinois Department of Child and Family
26 Services, the Illinois Department of Human Services, and the

1 Illinois Workers' Compensation Commission.

2 "Citizenship or immigration status" means all matters
3 regarding questions of citizenship of the United States or any
4 other country, the authority to reside in or otherwise be
5 present in the United States, the time or manner of a person's
6 entry into the United States, or any other civil immigration
7 matter enforced by the Department of Homeland Security or other
8 federal agency charged with the enforcement of civil
9 immigration laws.

10 "Contact information" means home address, work address,
11 telephone number, electronic mail address, social media
12 contact information, or any other means of contacting an
13 individual.

14 "Criminal activity" means any activity defined under
15 Chapter 720 of the Illinois Compiled Statutes or any similar
16 activity under any city or municipal code regardless of whether
17 the activity resulted in a prosecution.

18 "Eligible for release from custody" means that the
19 individual may be released from custody because one of the
20 following conditions has occurred:

21 (1) All criminal charges against the individual have
22 been dropped or dismissed.

23 (2) The individual has been acquitted of all criminal
24 charges filed against him or her.

25 (3) The individual has served all the time required for
26 his or her sentence.

1 (4) The individual has posted a bond.

2 (5) The individual is otherwise eligible for release
3 under State or local law, or local policy.

4 "Immigration agent" shall mean an agent of U.S. Immigration
5 and Customs Enforcement, U.S. Customs and Border Protection,
6 any individuals authorized to conduct enforcement of civil
7 immigration laws under 8 U.S.C. § 1357(q) or any other federal
8 law, other federal agents charged with enforcement of civil
9 immigration laws, and any successors.

10 "Immigration detainer" means a document issued by an
11 immigration agent to a federal, State, or local law enforcement
12 agency that requests that the law enforcement agency provide
13 notice of release or maintain custody of the individual based
14 on an alleged violation of a civil immigration law, including
15 detainers issued under Section 287.7 or Section 236.1 of Title
16 8 of the Code of Federal Regulations, and on DHS Form I-247
17 "Immigration Detainer - Notice of Action".

18 "Law enforcement agency" means an agency in this State
19 charged with enforcement of State, county, municipal, or
20 federal laws, or with managing custody of detained persons in
21 this State, and includes municipal police departments,
22 sheriff's departments, campus police departments, the Illinois
23 State Police, and the Illinois Department of Juvenile Justice,
24 but does not include the Illinois Department of Corrections.

25 "Law enforcement official" means any officer or other agent
26 of a State or local law enforcement agency authorized to

1 enforce criminal statutes, regulations, or local ordinances or
2 to operate jails or juvenile detention facilities or to
3 maintain custody of individuals in jails or juvenile detention
4 facilities, but does not include law enforcement officials
5 operating or maintaining custody of individuals in State
6 prisons through the Illinois Department of Corrections.

7 "Victim of criminal activity" means any individual who has
8 reported criminal activity to a law enforcement agency or
9 certifying agency, or has otherwise participated in the
10 detection, investigation, or prosecution of criminal activity,
11 who has suffered direct or proximate harm as a result of the
12 commission of any criminal activity and may include, but may
13 not be limited to, an indirect victim, regardless of the direct
14 victim's immigration or citizenship status, including the
15 spouse, children under 21 years of age and, if the direct
16 victim is under 21 years of age, parents, and unmarried
17 siblings under 18 years of age where the direct victim is
18 deceased, incompetent, or incapacitated. Bystander victims
19 shall also be considered. More than one victim can be
20 identified and provided with certification depending upon the
21 circumstances. For purposes of this definition, the term
22 "incapacitated" means unable to interact with law enforcement
23 agency or certifying agency personnel as a result of a
24 cognitive impairment or other physical limitation, or because
25 of physical restraint, disappearance or age, such as minors.

1 (725 ILCS 5/124C-15 new)

2 Sec. 124C-15. Policy for responding to immigration
3 detainers and administrative warrants.

4 (a) There being no legal authority under which the federal
5 government may compel an expenditure of State or local law
6 enforcement agency resources to comply with an immigration
7 detainer or administrative warrant, no law enforcement agency
8 may detain or continue to detain any individual on the basis of
9 any immigration detainer or administrative warrant, or
10 otherwise comply with an immigration detainer or
11 administrative warrant, after that individual becomes eligible
12 for release from custody.

13 (b) No individual subject to an immigration detainer or
14 administrative warrant shall be denied bail solely on the basis
15 of that immigration detainer or administrative warrant.
16 Nothing in this subsection (b) may be construed to undermine
17 the authority of a court to make a bail or bond determination
18 according to its usual procedures.

19 (c) Except as provided in this subsection, no law
20 enforcement official or other law enforcement agency personnel
21 shall:

22 (1) give any immigration agent access to any individual
23 or allow any immigration agent to use law enforcement
24 agency facilities for investigative interviews or other
25 purposes;

26 (2) provide any detainee, inmate, or booking lists to

1 an immigration agent; or

2 (3) expend their time responding to immigration agent
3 inquiries or communicating with immigration agents
4 regarding any individual's incarceration status, release
5 date, or contact information.

6 Nothing in this subsection shall be construed as restricting
7 the authority of any law enforcement official or law
8 enforcement agency to conduct any of the activities listed in
9 this subsection if an immigration agent presents a valid and
10 properly issued criminal warrant or if the law enforcement
11 official has a legitimate law enforcement purpose that is not
12 related to the enforcement of immigration laws.

13 (d) There being no legal authority under which the federal
14 government may compel an expenditure of State or local
15 resources to comply with an immigration detainer or
16 administrative warrant, or facilitate any other non-criminal
17 immigration enforcement, there shall be no expenditure of any
18 law enforcement agency resources or effort by law enforcement
19 agency personnel for this purpose, except as expressly provided
20 under this Act.

21 (e) Nothing in this Section shall be construed as
22 restricting any expenditure or activity necessary to the
23 performance by the State, any local unit of government, any law
24 enforcement or other agency, officer, employee, or agent
25 thereof of any obligations under any contract between the
26 State, the local unit of government, or the agency and federal

1 officials regarding the use of a facility to detain individuals
2 in federal immigration removal proceedings.

3 (f) Notwithstanding subsection (e) of this Section, no
4 State, local unit of government, or agency shall be permitted
5 to contract with a private for-profit vendor or contractor for
6 the provision of services (other than ancillary services)
7 relating to the operation or management of a facility to detain
8 individuals in federal immigration removal proceedings, or to
9 approve any permits, zoning changes, or other measures required
10 for, or to otherwise facilitate, the construction, operation,
11 or management of the facility.

12 (725 ILCS 5/124C-20 new)

13 Sec. 124C-20. Arrests based on certain information
14 prohibited. No law enforcement official shall stop, arrest,
15 search, detain, or continue to detain a person based solely on
16 an administrative warrant entered into the Federal Bureau of
17 Investigation's National Crime Information Center database, or
18 any successor or similar database maintained by the United
19 States.

20 (725 ILCS 5/124C-25 new)

21 Sec. 124C-25. Agreements to enforce federal civil
22 immigration laws. No law enforcement agency shall enter into an
23 agreement under 8 U.S.C. § 1357(g) or any other federal law
24 that permits State or local governmental entities to enforce

1 federal civil immigration laws.

2 (725 ILCS 5/124C-30 new)

3 Sec. 124C-30. Certifications for victims of criminal
4 activity.

5 (a) A certifying agency shall execute any certification
6 requested by any victim of criminal activity or representative
7 thereof including, but not limited to, the victim's attorney,
8 accredited representative, or domestic violence service
9 provider, within 90 days of receiving the request. In any case
10 in which the victim seeking certification is in federal
11 immigration removal proceedings, the certifying agency shall
12 execute the certification no later than 14 days after the
13 request is received by the agency. In any case in which the
14 victim or the victim's children would lose any benefits under 8
15 U.S.C. § 1184(p) and 8 U.S.C. § 1184(o) by virtue of having
16 reached the age of 21 years within 90 days after the certifying
17 agency receives the certification request, the certifying
18 agency shall execute the certification no later than 14 days
19 before the date on which the victim or child would reach the
20 age of 21 years. Requests for expedited certification must be
21 affirmatively raised by the victim.

22 (b) If a certifying agency fails to certify within the time
23 limit prescribed in subsection (a) of this Section or, a victim
24 of criminal activity disputes the content of a certification,
25 then the victim of criminal activity may bring an action in

1 circuit court to seek certification or amend the certification.
2 Nothing in this subsection (b) shall in any way limit a State
3 or local judge's authority to execute a certification outside
4 the procedures established by this Section.

5 (c) The head of each certifying agency shall designate an
6 agent, who performs a supervisory role within the agency, to
7 perform the following responsibilities:

8 (1) respond to requests for certifications;

9 (2) provide outreach to victims of criminal activity to
10 inform them of the agency's certification process; and

11 (3) keep written records of all certification requests
12 and responses, which shall be reported to the Illinois
13 TRUST Act Compliance Board on an annual basis.

14 (d) All certifying agencies shall develop a language access
15 protocol for non-English speaking victims of criminal
16 activity.

17 (e) A certifying agency shall reissue any certification
18 within 90 days of receiving a request from the victim of
19 criminal activity or representative thereof including, but not
20 limited to, the victim's attorney, accredited representative,
21 or domestic violence service provider.

22 (f) Unless otherwise required by applicable federal law, at
23 no time shall a certifying agency disclose information
24 regarding the citizenship or immigration status of any victim
25 of crime activity who is requesting a certification unless
26 required to do so by legal process or unless the certifying

1 agency has written authorization from the victim or, if the
2 victim is a minor or is otherwise not legally competent, by the
3 victim's parent or guardian.

4 (g) The Illinois Law Enforcement Training Standards Board,
5 established by the Illinois Police Training Act shall adopt
6 rules for minimum standards for a course of study on cultural
7 sensitivity training, including training on U and T
8 nonimmigrant visas among other remedies for immigrant
9 survivors of criminal activity. Each law enforcement agency's
10 continuing education program shall provide to each law
11 enforcement official continuing education concerning the U and
12 T nonimmigrant visas and continuing education concerning
13 cultural diversity awareness.

14 (h) All certifying agencies not subject to the training
15 requirements described in subsection (g) of this Section shall
16 adopt a training program on U and T nonimmigrant visas and
17 other remedies for immigrant survivors of criminal activity.

18 (725 ILCS 5/124C-35 new)

19 Sec. 124C-35. Oversight. The Governor shall appoint an
20 Illinois TRUST Act Compliance Board within 90 days of this Act
21 becoming law. This Board shall consist of 5 members, serving
22 terms of 3 years, representing immigrant communities, law
23 enforcement, and other entities concerned with public safety
24 and effective cooperation between immigrants and local police.
25 This Board shall be charged with all of the following

1 responsibilities:

2 (1) monitoring compliance with this Act;

3 (2) training of law enforcement officers and others
4 about this Act;

5 (3) dissemination of information about this Act to
6 affected communities and the general public;

7 (4) establishing mechanisms by which the public can
8 report concerns and recommendations regarding
9 implementation of the Act;

10 (5) identifying implementation issues and other
11 trends, and providing recommendations to the Governor and
12 the Attorney General for addressing these issues;

13 (6) conducting research regarding sharing of
14 immigration and citizenship status information and
15 personally identifiable information, between law
16 enforcement agencies and Immigration and Customs
17 Enforcement, including but not limited to research
18 regarding:

19 (A) requests for or investigations of immigration
20 and citizenship status information by law enforcement
21 agencies and officials,

22 (B) sharing of information and data posted in the
23 Illinois Law Enforcement Agencies Database System
24 (LEADS) or any other State administered database to
25 which immigration agents have access,

26 (C) immigration agents' use of the LEADS database

1 or any other State administered database, and

2 (D) the impact of the requests, investigations,
3 and sharing and use of information on relations between
4 law enforcement agencies and immigrant communities;

5 (7) conducting additional research as may be
6 necessary, including but not limited to requesting and
7 disseminating data from law enforcement agencies relevant
8 to this Act and this Act's impact on law enforcement
9 agencies, police-community relations, affected
10 communities, and the State overall; and

11 (8) any other responsibilities relating to this Act as
12 the Board may identify.

13 (725 ILCS 5/124C-40 new)

14 Sec. 124C-40. Private right of action.

15 (a) Any person who resides in this State may bring an
16 action in circuit court to challenge any law enforcement
17 official or agency for failure to fully comply with this Act.
18 If there is a judicial finding that a law enforcement official
19 or agency has violated this Act, the Court shall order that the
20 law enforcement official or agency pay a civil penalty of not
21 less than \$1,000 and not more than \$5,000 for each instance
22 that the law enforcement official or agency has violated this
23 Act.

24 (b) The court shall collect the civil penalty prescribed in
25 subsection (a) of this Section and remit the civil penalty to

1 the Crime Victim Services Division of the Office of the
2 Attorney General for use in its programs to assist victims of
3 crime.

4 (c) The court may award court costs and reasonable
5 attorneys' fees to any person who prevails by an adjudication
6 on the merits in a proceeding brought under this Section.

7 (d) Except in relation to matters in which a law
8 enforcement officer is adjudged to have acted in bad faith, a
9 law enforcement officer shall be indemnified by the law
10 enforcement agency for reasonable costs and expenses,
11 including attorneys' fees, incurred by an officer in connection
12 with any action, suit or proceeding brought under this Section
13 in which the officer may be a defendant by reason of the
14 officer being or having been a member of the law enforcement
15 agency.

16 Section 97. Severability. The provisions of this Act are
17 severable under Section 1.31 of the Statute on Statutes.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law."