



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB0022

Introduced 1/15/2015, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

- 725 ILCS 5/Art. 124C heading new
- 725 ILCS 5/124C-1 new
- 725 ILCS 5/124C-5 new
- 725 ILCS 5/124C-10 new
- 725 ILCS 5/124C-15 new
- 725 ILCS 5/124C-20 new
- 725 ILCS 5/124C-25 new
- 725 ILCS 5/124C-30 new
- 725 ILCS 5/124C-35 new
- 725 ILCS 5/124C-45 new

Creates the Illinois TRUST Act within the Code of Criminal Procedure of 1963. Provides that there being no legal authority under which the federal government may compel an expenditure of State or local resources to comply with an immigration detainer or administrative warrant, or facilitate any other non-criminal immigration enforcement, there shall be no expenditure of any law enforcement agency resources or effort by law enforcement agency personnel for these purposes, except as expressly provided under the Act. Provides that there being no legal authority under which the federal government may compel an expenditure of State or local law enforcement agency resources to comply with an immigration detainer or administrative warrant, no law enforcement agency may detain or continue to detain any individual on the basis of any immigration detainer or administrative warrant, or otherwise comply with an immigration detainer or administrative warrant, after that individual becomes eligible for release from custody. Provides that no individual subject to an immigration detainer or administrative warrant shall be denied bail solely on the basis of that immigration detainer or administrative warrant. Provides that no law enforcement official shall stop, arrest, search, detain, or continue to detain a person based solely on that person's citizenship or immigration status or an administrative warrant entered into the Federal Bureau of Investigation's National Crime Information Center database, or any successor or similar database maintained by the United States. Provides that no law enforcement agency shall enter into an agreement under federal law that permits State or local governmental entities to enforce federal civil immigration laws. Effective immediately.

LRB099 05659 MRW 25699 b

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. 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
15 laws and the administration of its criminal justice system.

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

19 (c) The Illinois criminal justice system has become
20 increasingly entangled in enforcement of federal civil
21 immigration laws, and has been used by U.S. Immigration and

1 Customs Enforcement (ICE) as a vehicle for identifying
2 individuals whom that agency can target for detention and
3 removal from the United States.

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

18 (e) While several law enforcement agencies in Illinois have
19 distanced themselves from federal immigration authorities
20 through trust-building measures such as not inquiring about
21 citizenship or immigration status or reporting
22 immigration-related information, ICE programs such as the
23 federal "Secure Communities" program and the new "Priority
24 Enforcement Program" and ICE access to the Law Enforcement
25 Agencies Database System (LEADS) still entangle local law
26 enforcement in immigration enforcement.

1 (f) ICE has used information gathered through programs like
2 "Secure Communities" to issue immigration detainers and
3 administrative warrants regarding individuals in law
4 enforcement custody. Between October 2011 and August 2013, ICE
5 transmitted 8,100 immigration detainers asking police
6 departments, jails, prisons, and other institutions in
7 Illinois to hold individuals for additional time beyond when
8 they would be eligible for release in a criminal matter or to
9 provide notice of their release. Of these, 5,629 (69%) targeted
10 individuals with no criminal convictions, and another 1,809
11 (22%) targeted individuals convicted of only minor offenses.
12 Nationwide, roughly half of all immigration detainers have
13 targeted individuals with no criminal convictions.

14 (g) Unlike criminal detainers, which comply with
15 fundamental protections under the Fourth Amendment to the U.S.
16 Constitution and Article I, Section 6 of the Illinois
17 Constitution, immigration detainers and administrative
18 warrants do not require a showing of probable cause or any of
19 the other procedural protections that undergird the right to be
20 free from unreasonable searches or seizures. Immigration
21 detainers and administrative warrants are voluntary requests
22 that generally do not confer arrest authority on state and
23 local law enforcement, and there is no independent state arrest
24 authority for civil immigration matters under a detainer or
25 administrative warrant. Nor is there state or local law
26 enforcement arrest authority for immigration administrative

1 warrants in the FBI's National Crime Information Center (NCIC)
2 database, which local law enforcement agencies routinely use.

3 (h) State and local law enforcement agencies are not
4 reimbursed or indemnified by the federal government for the
5 full costs of responding to a detainer or administrative
6 warrant, which can include, but are not limited to, extended
7 detention time, the administrative costs of tracking and
8 responding to the detainer or warrant, and costs or liability
9 incurred as a result of wrongful detainers or warrants. In
10 particular, law enforcement agencies must pay for the time
11 during which immigrants, who are deterred from posting bond by
12 the detainer or warrant, remain in law enforcement custody
13 while awaiting their day in court. Several recent federal court
14 decisions have ruled that local law enforcement agencies that
15 hold individuals solely based on immigration detainers can be
16 held liable for violations of the individuals' constitutional
17 rights. All of these costs are borne by local taxpayers.

18 (i) By subjecting individuals with no criminal history or
19 only minor convictions to removal, ICE's use of immigration
20 detainers and warrants and programs like "Secure Communities"
21 have disrupted families and communities, encouraged racial and
22 ethnic profiling, burdened taxpayers, and posed harm to our
23 State as a whole. These concerns contributed to the State of
24 Illinois' decision to withdraw from "Secure Communities" on May
25 4, 2011, a decision that ICE overrode in August 2011, as well
26 as adoption by at least 2 states and more than 250 local

1 jurisdictions across the United States (including Cook County,
2 Champaign County, and the city of Chicago) of policies limiting
3 compliance with ICE detainers. The U.S. Department of Homeland
4 Security announced in November 2014 that it is discontinuing
5 the "Secure Communities" program as previously configured as
6 well as most use of immigration detainers that request
7 continued detention of immigrants. Even with these changes, ICE
8 may still use detainers and administrative warrants, and is
9 implementing a new "Priority Enforcement Program" that still
10 entangles local police departments and jails in immigration
11 enforcement. The risk of ICE abuse to immigrant communities and
12 Illinois taxpayers remains.

13 (j) It is the intent of the General Assembly that this Act
14 shall not be construed as providing, expanding, or ratifying
15 the legal authority for any State or local law enforcement
16 agency to detain an individual on an immigration detainer or
17 administrative warrant.

18 (725 ILCS 5/124C-10 new)

19 Sec. 124C-10. Definitions.

20 "Administrative warrant" means an immigration warrant of
21 arrest, order to detain or release aliens, notice of custody
22 determination, notice to appear, removal order, warrant of
23 removal, or any other document, issued by an immigration agent
24 that can form the basis for an individual's arrest or detention
25 for a civil immigration enforcement purpose. This definition

1 does not include any warrants issued by a criminal court upon a
2 determination of probable cause and in compliance with the
3 requirements of the Fourth Amendment to the U.S. Constitution
4 and Article I, Section 6 of the Illinois Constitution.

5 "Certification" means any law enforcement certification or
6 statement required by federal immigration law including, but
7 not limited to the information required by 8 U.S.C. 1184(p) and
8 8 U.S.C. 1184(o), including current USCIS Form I-918,
9 Supplement B and USCIS Form I-914, Supplement B, respectively,
10 and any successor forms.

11 "Certifying agency" means a State or local law enforcement
12 agency, prosecutor, judge, or other authority, that has
13 responsibility for the investigation or prosecution of
14 criminal activity. This definition includes agencies that have
15 criminal investigative jurisdiction in their respective areas
16 of expertise, including but not limited to the Illinois
17 Department of Labor, Illinois Department of Children and Family
18 Services, the Illinois Department of Human Services, and the
19 Illinois Workers' Compensation Commission.

20 "Citizenship or immigration status" means all matters
21 regarding questions of citizenship of the United States or any
22 other country, the authority to reside in or otherwise be
23 present in the United States, the time or manner of a person's
24 entry into the United States, or any other civil immigration
25 matter enforced by the Department of Homeland Security or other
26 federal agency charged with the enforcement of civil

1 immigration laws.

2 "Contact information" means home address, work address,
3 telephone number, electronic mail address, social media
4 information, or any other means of contacting an individual.

5 "Criminal activity" means any activity defined under
6 chapter 720 of the Illinois Compiled Statutes or any similar
7 activity under any city or municipal code regardless of whether
8 the activity resulted in a prosecution.

9 "Eligible for release from custody" means that the
10 individual may be released from custody because one of the
11 following conditions has occurred:

12 (1) All criminal charges against the individual have
13 been dropped or dismissed.

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

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

18 (4) The individual has posted a bond.

19 (5) The individual is otherwise eligible for release
20 under state or local law, or local policy.

21 "Immigration agent" shall mean an agent of U.S. Immigration
22 and Customs Enforcement, U.S. Customs and Border Protection,
23 any individuals authorized to conduct enforcement of civil
24 immigration laws under 8 U.S.C. 1357(g) or any other federal
25 law, other federal agents charged with enforcement of civil
26 immigration laws, and any successors.

1 "Immigration detainer" means a document issued by an
2 immigration agent to a federal, State, or local law enforcement
3 agency that requests that the law enforcement agency provide
4 notice of release or maintain custody of the individual based
5 on an alleged violation of a civil immigration law, including
6 detainers issued under Section 287.7 or Section 236.1 of Title
7 8 of the Code of Federal Regulations, and on DHS Form I-247
8 "Immigration Detainer - Notice of Action."

9 "Law enforcement agency" means an agency in Illinois
10 charged with enforcement of State, county, municipal, or
11 federal laws, or with managing custody of detained persons in
12 the State, and includes municipal police departments,
13 sheriff's departments, campus police departments, the Illinois
14 Department of State Police, and the Illinois Department of
15 Juvenile Justice, but does not include the Illinois Department
16 of Corrections.

17 "Law enforcement official" means any officer or other agent
18 of a State or local law enforcement agency authorized to
19 enforce criminal statutes, rules, regulations, or local
20 ordinances or to operate jails or juvenile detention facilities
21 or to maintain custody of individuals in jails or juvenile
22 detention facilities, but does not include officials operating
23 or maintaining custody of individuals in State prisons through
24 the Illinois Department of Corrections.

25 "Victim of criminal activity" means any individual who has
26 reported criminal activity to a law enforcement agency or

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

18 (725 ILCS 5/124C-15 new)

19 Sec. 124C-15. Responding to immigration detainers,
20 administrative warrants, and other requests.

21 (a) There being no legal authority under which the federal
22 government may compel an expenditure of State or local
23 resources to comply with an immigration detainer or
24 administrative warrant, or facilitate any other non-criminal
25 immigration enforcement, there may not be expenditure of any

1 law enforcement agency resources or effort by law enforcement
2 agency personnel for these purposes, except as expressly
3 provided under this Act.

4 (b) 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, a law enforcement agency
8 may not detain or continue to detain any individual on the
9 basis of 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 (c) 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 (c) may be construed to undermine
17 the authority of a court to make a bail or bond determination
18 according to its rules and procedures.

19 (d) 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 (e) Nothing in subsection (d) shall be construed as
7 restricting the authority of any law enforcement official or
8 law enforcement agency to conduct any of the activities listed
9 in subsection (d) if an immigration agent presents a valid and
10 properly issued criminal warrant or if the law enforcement
11 official has a law enforcement purpose if the warrant or
12 purpose is related to the investigation or prosecution of any
13 criminal offense in this State, any criminal offense in another
14 state, or any federal criminal offense. The preceding sentence
15 shall not apply to any case in which the warrant or law
16 enforcement purpose is related solely to the investigation or
17 prosecution of any federal criminal offense described in 8
18 U.S.C. 1304(e) (regarding carrying of immigration registration
19 cards), 1306(a) (regarding failure to register) and 1306(b)
20 (regarding to notify of change of address), 1325 (unlawful
21 entry), and 1326 (unlawful reentry), unless the warrant or law
22 enforcement purpose is related to the investigation or
23 prosecution of an offense under 8 U.S.C. 1326 (unlawful
24 reentry) of an individual previously convicted of a "forcible
25 felony" as defined in Section 2-8 of the Criminal Code of 2012,
26 or an equivalent offense under any other State or federal

1 criminal laws.

2 (f) Nothing in this Section shall be construed as
3 restricting any expenditure or activity necessary to the
4 performance by the State, any local unit of government, any law
5 enforcement or other agency, official, employee, or agent
6 thereof of any obligations under any contract between the
7 State, the local unit of government, or the agency and federal
8 officials regarding the use of a facility to detain individuals
9 in federal immigration removal proceedings.

10 (g) Notwithstanding subsection (f), no State or local
11 governmental entity shall be permitted to contract with a
12 private for-profit vendor or contractor for the provision of
13 services (other than ancillary services) relating to the
14 operation or management of a facility to detain individuals in
15 federal immigration removal proceedings, or to approve any
16 permits, zoning changes, or other measures required for, or to
17 otherwise facilitate, the construction, operation, or
18 management of the facility.

19 (725 ILCS 5/124C-20 new)

20 Sec. 124C-20. Arrests based on certain information
21 prohibited. No law enforcement official shall stop, arrest,
22 search, detain, or continue to detain a person based solely on
23 that person's citizenship or immigration status or an
24 administrative warrant entered into the Federal Bureau of
25 Investigation's National Crime Information Center database, or

1 any successor or similar database maintained by the United
2 States.

3 (725 ILCS 5/124C-25 new)

4 Sec. 124C-25. Agreements to enforce federal civil
5 immigration laws. No law enforcement agency shall enter into an
6 agreement under 8 U.S.C. 1357(g) or any other federal law that
7 permits state or local governmental entities to enforce federal
8 civil immigration laws.

9 (725 ILCS 5/124C-30 new)

10 Sec. 124C-30. Certifications for victims of criminal
11 activity.

12 (a) A certifying agency shall execute any certification
13 requested by any victim of criminal activity or representative
14 of a victim including, but not limited to, the victim's
15 attorney, accredited representative, or domestic violence
16 service provider, within 90 days of receiving the request. In
17 any case in which the victim seeking certification is in
18 federal immigration removal proceedings, the certifying agency
19 shall execute the certification no later than 14 days after the
20 request is received by the agency. In any case in which the
21 victim or the victim's children will lose any benefits under 8
22 U.S.C. 1184(p) and 8 U.S.C. 1184(o) by virtue of having reached
23 the age of 21 years within 90 days after the certifying agency
24 receives the certification request, the certifying agency

1 shall execute the certification no later than 14 days before
2 the date on which the victim or child would reach the age of 21
3 years. Requests for expedited certification must be
4 affirmatively raised by the victim.

5 (b) If a certifying agency fails to certify within the time
6 limit prescribed in subsection (a) of this Section, or a victim
7 of criminal activity disputes the content of a certification,
8 then the victim of criminal activity may bring an action in
9 circuit court to seek certification or amend the certification.

10 This subsection (b) shall not confer a right of action in
11 circuit court against a State or local judge. Nothing in this
12 subsection (b) shall in any way limit a State or local judge's
13 authority to execute a certification outside the procedures
14 established by this Section.

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

18 (1) respond to requests for certifications;

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

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

24 (d) All certifying agencies shall implement a language
25 access protocol for non-English speaking victims of criminal
26 activity.

1 (e) A certifying agency shall reissue any certification
2 within 90 days of receiving a request from the victim of
3 criminal activity or representative of the victim including,
4 but not limited to, the victim's attorney, accredited
5 representative, or domestic violence service provider.

6 (f) Unless otherwise required by applicable federal law, at
7 no time shall a certifying agency disclose information
8 regarding the citizenship or immigration status of any victim
9 of criminal activity who is requesting a certification unless
10 required to do so by legal process or unless the certifying
11 agency has written authorization from the victim or, if the
12 victim is a minor or is otherwise not legally competent, by the
13 victim's parent or guardian.

14 (g) The Illinois Law Enforcement Training Standards Board
15 shall adopt rules for minimum standards for a course of study
16 on cultural sensitivity training, including training on U and T
17 nonimmigrant visas among other remedies for immigrant
18 survivors of criminal activity. Each law enforcement agency's
19 continuing education program shall provide to the head of the
20 agency and the agency's designated certifying agent continuing
21 education concerning the U and T nonimmigrant visas and
22 continuing education concerning cultural diversity awareness.

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

1 (725 ILCS 5/124C-35 new)

2 Sec. 124C-35. Oversight. The Governor shall appoint an
3 Illinois TRUST Act Compliance Board within 90 days after the
4 effective date of this amendatory Act of the 99th General
5 Assembly. This Board shall consist of 5 members, serving terms
6 of 3 years, representing immigrant communities, law
7 enforcement, and other entities concerned with public safety
8 and effective cooperation between immigrants and law
9 enforcement agencies. The Board shall be charged with all of
10 the following responsibilities:

11 (1) monitoring compliance with this Act;

12 (2) training of law enforcement agencies and officials
13 and others about this Act;

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

16 (4) establishing mechanisms by which the public can
17 report concerns and recommendations regarding
18 implementation of the Act;

19 (5) identifying implementation issues and other
20 trends, and providing recommendations to the Governor and
21 the Attorney General for addressing these issues;

22 (6) conducting research regarding sharing of
23 immigration and citizenship status information and
24 personally identifiable information, between law
25 enforcement agencies and Immigration and Customs

1 Enforcement, including but not limited to research
2 regarding:

3 (A) requests for or investigations of immigration
4 and citizenship status information by law enforcement
5 agencies and officials;

6 (B) sharing of information and data posted in the
7 Illinois Law Enforcement Agencies Database System
8 (LEADS) or any other State administered database to
9 which immigration agents have access;

10 (C) immigration agents' use of the LEADS database
11 or any other State administered database; and

12 (D) the impact of the requests, investigations,
13 sharing, and use of information on relations between
14 law enforcement agencies and immigrant communities;

15 (7) conducting additional research as may be
16 necessary, including but not limited to requesting and
17 disseminating data from law enforcement agencies relevant
18 to this Act and this Act's impact on law enforcement
19 agencies, police-community relations, affected
20 communities, and the State; and

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

23 (725 ILCS 5/124C-45 new)

24 Sec. 124C-45. Private right of action.

25 (a) Any person who resides in this State may bring an

1 action in circuit court to challenge any law enforcement agency
2 or certifying agency or any official of the agency (other than
3 a State or local judge) for failure to fully comply with this
4 Act. If there is a judicial finding that an agency has violated
5 any provisions of this Act, the court shall enjoin the agency
6 from violating the same provision or provisions of this Act.
7 The court may also order disciplinary action against the
8 official, remedial training for the official or agency, or any
9 other form of equitable relief the court determines is just and
10 proper. If there is a judicial finding in a subsequent action
11 that an agency has violated an injunction imposed for violating
12 this Act, the court may order the agency to pay a civil penalty
13 of not less than \$1,000 and not more than \$5,000 for each
14 instance that the official or agency has violated the
15 injunction.

16 (b) The court shall collect the civil penalty prescribed in
17 subsection (a) and remit the civil penalty to the Crime Victim
18 Services Division of the Office of the Attorney General for use
19 in its programs to assist victims of crime.

20 (c) The court may award court costs and reasonable
21 attorneys' fees to any person who prevails in a proceeding
22 brought under this Section.

23 (d) Except in relation to matters in which an official of a
24 law enforcement agency or certifying agency is adjudged to have
25 acted in bad faith, the official shall be indemnified by the
26 agency for reasonable costs and expenses, including attorneys'

1 fees, incurred by an official in connection with any action,
2 suit or proceeding brought under this Section in which the
3 official may be a defendant by reason of the official being or
4 having been a official of the agency.

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

7 Section 98. This amendatory Act of the 99th General
8 Assembly supersedes Executive Order 2015-02. Executive Order
9 2015-02 shall have no force or effect.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.