

SENATE, No. 1724

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Establishes law enforcement procedures for responding to immigration detainees and certain requests issued by federal immigration authorities.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the enforcement of federal immigration policy
2 and supplementing Title 52 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. As used in this act:

8 “Federal immigration authorities” means agencies of the United
9 States government responsible for implementing and enforcing
10 federal immigration law, including but not limited to, the United
11 States Immigration and Customs Enforcement, United States
12 Customs and Border Protection, and United States Citizenship and
13 Immigration Services within the Department of Homeland Security.

14 “Detainer request” means a request that a law enforcement
15 agency maintain custody of a person beyond the time that person
16 would otherwise be eligible for release in order to facilitate the
17 transfer of that person to federal immigration authorities.

18 “Immigration notification” means a detainer request, transfer
19 request, or notification request issued by federal immigration
20 authorities to a law enforcement agency.

21 “Law enforcement agency” means a State, county, or municipal
22 law enforcement agency and State or county correctional facility.

23 “Notification request” means a request that a law enforcement
24 agency inform federal immigration authorities of the release of a
25 person from the law enforcement agency’s custody and includes,
26 but is not limited to, a Department of Homeland Security Form I-
27 247N.

28 “Transfer request” means a request that a law enforcement
29 agency facilitate the transfer of an individual to the custody of
30 federal immigration authorities, and includes, but is not limited to, a
31 Department of Homeland Security Form I-247X.

32 b. A law enforcement agency shall not comply with or detain
33 any person on the basis of an immigration notification unless that
34 person has at any time been convicted of one or more of the
35 following offenses:

- 36 (1) N.J.S.2C:11-3, murder;
37 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
38 (3) N.J.S.2C:11-5, vehicular homicide;
39 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
40 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),
41 disarming a law enforcement officer;
42 (6) N.J.S.2C:13-1, kidnapping;
43 (7) N.J.S.2C:14-2, sexual assault;
44 (8) N.J.S.2C:15-1, robbery;
45 (9) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
46 (10) N.J.S.2C:17-1, arson and related offenses;
47 (11) N.J.S.2C:18-2, burglary;
48 (12) N.J.S.2C:20-5, theft by extortion;

- 1 (13) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
2 booby traps in manufacturing or distribution facilities;
3 (14) N.J.S.2C:35-9, strict liability for drug induced deaths;
4 (15) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
5 (16) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
6 possessing chemical weapons, biological agents or nuclear or
7 radiological devices;
8 (17) N.J.S.2C:39-5, unlawful possession of a weapon;
9 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
10 degree;
11 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking;
12 (20) N.J.S.2C:24-4, endangering the welfare of a child; or
13 (21) any crime or offense involving domestic violence, as
14 defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-
15 19).
16 c. Nothing in this section shall restrict a State, county, or
17 municipal employee, entity, or agency from maintaining,
18 requesting, sending, receiving, or exchanging information regarding
19 a person's citizenship or immigration status, lawful or unlawful,
20 with another Federal, State, or local government entity in
21 accordance with 8 U.S.C. 1373 and 8 U.S.C. 1644.

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23 2. This act shall take effect immediately.
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26 STATEMENT
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28 This bill establishes certain procedures to be followed by State,
29 county, or municipal law enforcement agencies and State or county
30 correctional facilities when responding to voluntary requests for
31 information or detainers issued by federal immigration authorities.

32 Unlike criminal detainers, which are supported by a warrant and
33 require probable cause, there is no requirement for a warrant and no
34 established standard of proof, such as reasonable suspicion or
35 probable cause, for issuing a federal immigration detainer request.
36 In addition, states are not required to comply with federal
37 immigration detainer requests, information requests, or transfer
38 requests.

39 The United States Third Circuit Court of Appeals in Galarza v.
40 Szalczyk, 745 F.3d 634 (3d Cir. Pa. 2014) held that states and
41 localities are not required to hold people based on detainers issued
42 by federal immigration authorities. The third circuit's decision was
43 recognized by the United States District Court for the District of
44 Oregon in Miranda-Olivares v. Clackamas County, 2014 U.S. Dist.
45 LEXIS 50340 (D. Or. Apr. 11, 2014), which held that a plaintiff's
46 detention based on an "investigatory" detainer issued by
47 immigration authorities violated the plaintiff's Fourth Amendment
48 rights under the United States Constitution.

1 Under current federal law, an authorized immigration officer
2 may request a State or local law enforcement agency to continue to
3 detain a noncitizen for a limited time (up to 48 hours plus weekends
4 and federal holidays) after the noncitizen is eligible for release from
5 criminal custody in order to give immigration authorities time to
6 take the noncitizen into federal custody. In addition, federal
7 immigration authorities may request a law enforcement agency to
8 inform them of the release of a noncitizen from criminal custody or
9 facilitate the transfer of a noncitizen to the custody of immigration
10 authorities. However, compliance by State, county, and municipal law
11 enforcement is not mandatory.

12 This bill provides that State, county, or municipal law
13 enforcement agencies and State or county correctional facilities are
14 only to comply with these federal immigration requests when the
15 person of interest has been convicted of a serious crime. The bill
16 provides that State, county, or municipal law enforcement agencies
17 and State or county correctional facilities are not to notify, transfer,
18 or detain any person on the basis of an immigration notification
19 unless that person has been convicted of a serious crime, including:
20 murder; aggravated manslaughter or manslaughter; vehicular
21 homicide; aggravated assault; disarming a law enforcement officer;
22 kidnapping; sexual assault; robbery; carjacking; arson and related
23 offenses; burglary; theft by extortion; booby traps in manufacturing
24 or distribution facilities; strict liability for drug-induced deaths;
25 terrorism; producing or possessing chemical weapons, biological
26 agents or nuclear or radiological devices; unlawful possession of a
27 weapon; racketeering, when it is a crime of the first degree;
28 firearms trafficking; endangering the welfare of a child; or any
29 crime or offense involving domestic violence.

30 The bill does not prohibit a State, county, or municipal
31 employee, entity, or agency from sharing information regarding a
32 person's citizenship or immigration status with another Federal,
33 State, or local government entity in accordance with federal law.

34 This bill is based on California's "Trust Act," which limits the
35 state's cooperation with federal immigration authorities.