CHAPTER 1020

ILLEGAL REENTRY BY ALIENS — ARREST PROHIBITIONS — ENFORCEMENT IMMUNITY AND INDEMNIFICATION

S.F. 2340

AN ACT relating to illegal reentry into the state by certain aliens, prohibition on arrest in certain locations, orders to return to a foreign nation, immunity from liability and indemnification for enforcement actions, sentencing restrictions, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. **718C.1 Definitions.**

As used in this chapter:

1. *"Alien"* means the same as defined in 8 U.S.C. §1101, as of January 1, 2023.

2. *"Port of entry"* means a port of entry in the United States as designated by 19 C.F.R. pt. 101.

Sec. 2. NEW SECTION. **718C.2 Illegal reentry into state by certain aliens.**

1. A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state under any of the following circumstances:

a. The person has been denied admission to or has been excluded, deported, or removed from the United States.

b. The person has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

2. An offense under this section is an aggravated misdemeanor, except that the offense is:

a. A class "D" felony if any of the following are true:

(1) The person's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against a person, or both.

(2) The person was excluded pursuant to 8 U.S.C. §1225(c) because the defendant was excludable under 8 U.S.C. §1182(a)(3)(B).

(3) The person was removed pursuant to the provisions of 8 U.S.C. ch. 12, subch. V.

(4) The person was removed pursuant to 8 U.S.C. §1231(a)(4)(B).

b. A class "C" felony if the person was removed subsequent to a conviction for the commission of a felony.

3. For purposes of this section, *"removal"* includes an order issued under this chapter or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

Sec. 3. NEW SECTION. **718C.3 Arrest prohibited in certain locations.**

Notwithstanding any other law, a peace officer may not arrest or detain a person for purposes of enforcing a provision of this chapter if the person is on the premises or grounds of any of the following places:

1. A public or private primary or secondary school for educational purposes.

2. A church, synagogue, or other established place of religious worship.

3. A health care facility, as defined in section 135C.1, including a facility a state agency maintains or operates to provide health care, or the office of a health care provider, provided that the person is on the premises or grounds of the facility or office for the purpose of receiving medical treatment.

4. A facility that provides forensic medical examinations to sexual assault survivors provided that the person is on the premises or grounds of the facility for purposes of obtaining a forensic medical examination and treatment.

Sec. 4. NEW SECTION. **718C.4 Order to return to foreign nation.**

1. A judge during a person's initial appearance following an arrest for a violation of this chapter may, after making a determination that probable cause exists for the arrest, order the person released from custody and issue a written order in accordance with subsection 3.

2. The judge in a person's case at any time after the person's initial appearance may, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under this chapter, dismiss the charge pending against the person and issue a written order in accordance with subsection 3.

3. A written order authorized by subsection 1 or 2 shall discharge the person and require the person to return to the foreign nation from which the person entered or attempted to enter, and may be issued only if all of the following requirements are met:

a. The person agrees to the order.

b. The person has not previously been convicted of an offense under this chapter, or previously obtained a discharge under an order under subsection 1 or 2.

c. The person is not charged with another offense that is punishable as an aggravated misdemeanor or any higher category of offense.

d. Before the issuance of the order, the arresting law enforcement agency has done all of the following:

(1) Collected all available identifying information of the person, which must include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person.

(2) Cross-referenced the collected information with all relevant local, state, and criminal databases and federal lists or classifications used to identify a person as a threat or potential threat to national security.

4. Upon a person's conviction of an offense under this chapter, the judge shall enter in the judgment in the case an order requiring the person to return to the foreign nation from which the person entered or attempted to enter. An order issued under this subsection takes effect on completion of the term of confinement or imprisonment imposed by the judgment.

5. An order issued under this section must include all of the following:

a. The manner of transportation of the person to a port of entry.

b. The law enforcement officer or state agency responsible for monitoring compliance with the order.

6. An order issued under this article [1] must be filed with the county clerk of the county in which the person was arrested for an order described by subsection 1, or with the clerk of the court exercising jurisdiction in the case for an order described by subsection 2 or 4.

7. Not later than the seventh day after the date an order is issued under this section, the law enforcement officer or state agency required to monitor compliance with the order shall report the issuance of the order to the department of public safety for inclusion in the computerized criminal history system.

Sec. 5. NEW SECTION. **718C.5 Refusal to comply with order to return to foreign nation.**

1. A person who is an alien commits an offense if all of the following are true:

a. The person has been charged with or convicted of an offense under this chapter.

b. A judge has issued an order under this chapter for the person to return to the foreign nation from which the person entered or attempted to enter.

c. The person failed to comply with the order.

2. An offense under this section is a class "C" felony.

Sec. 6. NEW SECTION. **718C.6 Abatement of prosecution on basis of immigration status determination prohibited.**

A court may not abate the prosecution of an offense under this chapter on the basis that a federal determination regarding the immigration status of the person is pending or will be initiated.

Sec. 7. NEW SECTION. **718C.7 Civil immunity for and indemnification of local government officials, employees, and contractors.**

1. Except as provided by subsection 4, a local government official, employee, or contractor is immune from liability for damages arising from a cause of action under state law resulting

[1] See chapter 1154, §23 herein

from an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

2. Subject to subsection 3 and except as provided by subsection 4, a local government shall indemnify an official, employee, or contractor of the local government for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

3. Indemnification payments made under subsection 2 by a local government shall not exceed the following:

a. One hundred thousand dollars to any one person or three hundred thousand dollars for any single occurrence in the case of personal injury or death.

b. Ten thousand dollars for a single occurrence of property damage.

4. Subsections 1 and 2 do not apply if the court or jury determines that the local government official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

5. A local government shall indemnify an official, employee, or contractor of the local government for reasonable attorney fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

6. This section shall not be construed to waive any statutory limits on damages under state law.

Sec. 8. NEW SECTION. **718C.8 Civil immunity for and indemnification of state officials, employees, and contractors.**

1. Except as provided by subsection 4, an elected or appointed state official, or a state employee or contractor, is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

2. Except as provided by subsection 4, the state shall indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

3. Notwithstanding any other law, an indemnification payment made under subsection 2 is not subject to an indemnification limit under the laws of this state.

4. Subsections 1 and 2 do not apply if the court or jury determines that the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

5. The state shall indemnify a state official, employee, or contractor for reasonable attorney fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce this chapter during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

6. A state official, employee, or contractor who may be entitled to indemnification under subsection 2 is entitled to representation by the attorney general in an action in connection with which the official, employee, or contractor may be entitled to that indemnification.

7. This section shall not be construed to waive any statutory limits on damages under state law.

Sec. 9. NEW SECTION. **718C.9 Appeal to supreme court.**

For a civil action brought against a person who may be entitled to immunity or indemnification under section 718C.7 or 718C.8, an appeal shall be taken directly to the supreme court.

Sec. 10. NEW SECTION. **718C.10 Deferred judgment, deferred sentence, or suspended sentence prohibited.**

Notwithstanding any other provision of law, a person who is convicted of an offense under section 718C.2 or 718C.5 shall not be eligible for a deferred judgment, deferred sentence, or suspended sentence.

Sec. 11. Section 907.3, unnumbered paragraph 1, Code 2024, is amended to read as follows:

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony, ~~or~~ to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen, or to a violation of section 718C.2 or 718C.5.

Approved April 10, 2024