

Senate File 481 - Introduced

SENATE FILE 481
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO SSB 1172)

A BILL FOR

1 An Act relating to the enforcement of immigration laws and
2 providing penalties and remedies, including the denial of
3 state funds to certain entities.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 825.1 Definitions.

2 1. "*Campus police department*" means a law enforcement agency
3 of an institution governed by the state board of regents, a
4 community college, or any other postsecondary educational
5 institution in this state that receives state funds.

6 2. "*Immigration detainer request*" means a federal government
7 request to a local entity or campus police department to
8 maintain temporary custody of an alien. "*Immigration detainer*
9 *request*" includes verbal and written requests, including a
10 United States department of homeland security form I-247 or a
11 similar or successor form.

12 3. "*Immigration law*" means a law of this state or a federal
13 law relating to aliens, immigrants, or immigration, including
14 but not limited to the federal Immigration and Nationality Act,
15 8 U.S.C. §1101 et seq.

16 4. "*Lawful detention*" means the detention of a person by a
17 local entity or campus police department for the investigation
18 of a public offense. "*Lawful detention*" excludes a detention if
19 the sole reason for the detention is that a person is a victim
20 of or witness to a public offense or is reporting a public
21 offense.

22 5. "*Local entity*" means the governing body of a city,
23 county, institution governed by the state board of regents,
24 community college, or any other postsecondary educational
25 institution in this state that receives state funds. "*Local*
26 *entity*" includes an officer or employee of a local entity
27 or a division, department, or other body that is part of a
28 local entity, including but not limited to a sheriff, police
29 department, city attorney, or county attorney.

30 6. "*Policy*" includes a formal, written rule, policy,
31 procedure, regulation, order, ordinance, motion, resolution, or
32 amendment and an informal, unwritten policy.

33 7. "*Public offense*" excludes a moving traffic violation
34 under chapter 321.

35 Sec. 2. NEW SECTION. 825.2 County and city liability —

1 **failure to comply with immigration detainer request.**

2 1. If a county or city or officer or employee of a county
3 or city or a division, department, or other body that is part
4 of a county or city releases from custody a person who is the
5 subject of an immigration detainer request issued by United
6 States immigration and customs enforcement and received by
7 the county or city, the county or city shall be liable under
8 chapter 670 for damages resulting from any felony committed
9 by the person in this state within ten years following such
10 person's release if all of the following apply:

11 a. The county or city did not detain the person as
12 requested.

13 b. The county or city had probable cause to believe that the
14 person was not a citizen of the United States and was subject
15 to removal from the United States.

16 c. The person had been convicted before release of a public
17 offense punishable as a serious misdemeanor or greater offense.

18 2. A county or city shall not be liable for damages
19 sustained by a person who was the subject of an immigration
20 detainer request following the person's release from custody by
21 a county or city.

22 **Sec. 3. NEW SECTION. 825.3 Enforcement of federal**
23 **immigration law by law enforcement officers.**

24 1. A state or local law enforcement officer shall not stop
25 a motor vehicle or conduct a search of a business or residence
26 solely to enforce a federal immigration law, unless the officer
27 is acting at the request of, or providing assistance to, an
28 appropriate federal law enforcement officer or is acting under
29 the terms of an agreement between the law enforcement agency
30 employing the officer and a federal agency under which the law
31 enforcement agency employing the officer receives delegated
32 authority to enforce the federal immigration law.

33 2. A state or local law enforcement officer may arrest a
34 person on the grounds that the person is an alien not lawfully
35 present in the United States only if the officer is acting in

1 accordance with this chapter and under authority specifically
2 granted under applicable federal immigration law.

3 Sec. 4. NEW SECTION. 825.4 Law enforcement agency duties —
4 immigration detainer requests.

5 A law enforcement agency in this state that has custody of
6 a person subject to an immigration detainer request issued by
7 United States immigration and customs enforcement shall fully
8 comply with any instruction made in the detainer request and in
9 any other legal document provided by a federal agency.

10 Sec. 5. NEW SECTION. 825.5 Completion of sentence in
11 federal custody.

12 1. The court, in a criminal proceeding in this state in
13 which the sentence requires a defendant who is the subject
14 of an immigration detainer request to be confined in a
15 correctional facility, shall issue an order at the time of
16 sentencing requiring the correctional facility in which the
17 defendant is to be confined and all appropriate government
18 officers to require the defendant to be transferred to serve in
19 federal custody the final portion of the defendant's sentence,
20 not to exceed a period of seven days, if a facility or officer
21 determines that the change in the place of confinement will
22 facilitate the seamless transfer of the defendant into federal
23 custody. The court in a criminal proceeding in this state
24 shall retain jurisdiction to issue such an order at a later
25 date if the court receives notice from a federal agency that a
26 defendant was the subject of an immigration detainer request at
27 the time of sentencing. The court shall issue such an order as
28 soon as practicable after receiving such notice.

29 2. In the absence of an order issued under this section,
30 a facility or officer acting under exigent circumstances may
31 perform such a transfer after making a determination that the
32 change in the place of confinement will facilitate the seamless
33 transfer of the defendant into federal custody.

34 3. A defendant shall be transferred pursuant to this section
35 only if appropriate officers of the federal government consent

1 to the transfer of a defendant into federal custody under the
2 circumstances described in this section.

3 Sec. 6. NEW SECTION. 825.6 Restriction on enforcement of
4 immigration law prohibited.

5 1. A local entity or campus police department shall not
6 adopt or enforce a policy or take any other action under which
7 the local entity or campus police department prohibits or
8 discourages the enforcement of immigration laws.

9 2. A local entity or campus police department shall not
10 prohibit or discourage a person who is a law enforcement
11 officer, corrections officer, county attorney, city attorney,
12 or other official who is employed by or otherwise under the
13 direction or control of the local entity or campus police
14 department from doing any of the following:

15 a. Inquiring about the immigration status of a person under
16 a lawful detention or under arrest.

17 b. Doing any of the following with respect to information
18 relating to the immigration status, lawful or unlawful, of any
19 person under a lawful detention or under arrest, including
20 information regarding the person's place of birth:

21 (1) Sending the information to or requesting or receiving
22 the information from United States citizenship and immigration
23 services, United States immigration and customs enforcement, or
24 another relevant federal agency.

25 (2) Maintaining the information.

26 (3) Exchanging the information with another local entity
27 or campus police department or a federal or state governmental
28 entity.

29 c. Assisting or cooperating with a federal immigration
30 officer as reasonable or necessary, including providing
31 enforcement assistance.

32 d. Permitting a federal immigration officer to enter and
33 conduct enforcement activities at a jail or other detention
34 facility to enforce a federal immigration law.

35 Sec. 7. NEW SECTION. 825.7 Written policies.

1 No later than January 1, 2018, each state or local law
2 enforcement agency subject to this chapter shall do all of the
3 following:

4 1. Formalize in writing any unwritten, informal policies
5 relating to the enforcement of immigration laws.

6 2. Update the agency's policies to be consistent with this
7 chapter, to require each officer or other employee of the law
8 enforcement agency to fully comply with this chapter, and to
9 prohibit an officer or other employee of the law enforcement
10 agency from preventing law enforcement agency personnel from
11 fully complying with this chapter.

12 Sec. 8. NEW SECTION. **825.8 Discrimination prohibited.**

13 A local entity, campus police department, or a person
14 employed by or otherwise under the direction or control of a
15 local entity or campus police department shall not consider
16 race, skin color, language spoken, or national origin while
17 enforcing immigration laws except to the extent permitted by
18 the Constitution of the United States or the Constitution of
19 the State of Iowa.

20 Sec. 9. NEW SECTION. **825.8A Victim of or witness to a crime**
21 **— limitation on collection of information.**

22 A local entity, campus police department, or a person
23 employed by or otherwise under the direction or control of a
24 local entity or campus police department shall not ask for
25 or collect any information from a victim of or witness to an
26 alleged public offense or from a person reporting an alleged
27 public offense, including the victim's, witness's, or person's
28 national origin, that is not pertinent to the investigation of
29 the alleged public offense.

30 Sec. 10. NEW SECTION. **825.9 Complaints — notification —**
31 **civil action.**

32 1. Any person, including a federal agency, may file a
33 complaint with the attorney general or a county attorney
34 alleging that a local entity or campus police department has
35 violated or is violating this chapter if the person offers

1 evidence to support such an allegation. The person shall
2 include with the complaint any evidence the person has in
3 support of the complaint.

4 2. A local entity or campus police department for which the
5 attorney general or county attorney has received a complaint
6 pursuant to this section shall comply with any document
7 requests, including a request for supporting documents,
8 from the attorney general or county attorney relating to the
9 complaint.

10 3. A complaint filed pursuant to subsection 1 shall not be
11 valid unless the attorney general or county attorney determines
12 that a violation of this chapter by a local entity or campus
13 police department was intentional.

14 4. If the attorney general or county attorney determines
15 that a complaint filed pursuant to this section against
16 a local entity or campus police department is valid, the
17 attorney general or county attorney, not later than ten days
18 after the date of such a determination, shall provide written
19 notification to the local entity or campus police department
20 by certified mail, with return receipt requested, stating all
21 of the following:

22 a. A complaint pursuant to this section has been filed and
23 the grounds for the complaint.

24 b. The attorney general or county attorney has determined
25 that the complaint is valid.

26 c. The attorney general or county attorney is authorized to
27 file a civil action in district court pursuant to subsection
28 6 to enjoin a violation of this chapter no later than forty
29 days after the date on which the notification is received if
30 the local entity or campus police department does not come into
31 compliance with the requirements of this chapter.

32 d. The local entity or campus police department and any
33 entity that is under the jurisdiction of the local entity or
34 campus police department will be denied state funds pursuant to
35 section 825.10 for the state fiscal year following the year in

1 which a final judicial determination in a civil action brought
2 under this section is made.

3 5. No later than thirty days after the date on which a
4 local entity or campus police department receives written
5 notification under subsection 4, the local entity or campus
6 police department shall provide the attorney general or county
7 attorney with all of the following:

8 a. Copies of all of the local entity's or campus police
9 department's written policies relating to immigration
10 enforcement actions.

11 b. A copy of each immigration detainer request received by
12 the local entity or campus police department from a federal
13 agency.

14 c. A copy of each response sent by the local entity or
15 campus police department to an immigration detainer request
16 described by paragraph "b".

17 d. A description of all actions the local entity or campus
18 police department has taken or will take to correct any
19 violations of this chapter.

20 e. If applicable, any evidence that would refute the
21 allegations made in the complaint.

22 6. No later than forty days after the date on which the
23 notification pursuant to subsection 4 is received, the attorney
24 general or county attorney shall file a civil action in
25 district court to enjoin any ongoing violation of this chapter
26 by a local entity or campus police department.

27 Sec. 11. NEW SECTION. 825.10 Denial of state funds.

28 1. Notwithstanding any other provision of law to the
29 contrary, a local entity, including any entity under the
30 jurisdiction of the local entity, or a campus police department
31 shall be ineligible to receive any state funds if the local
32 entity or campus police department intentionally violates this
33 chapter.

34 2. State funds shall be denied to a local entity or campus
35 police department pursuant to subsection 1 by all state

1 agencies for each state fiscal year that begins after the date
2 on which a final judicial determination that the local entity
3 or campus police department has intentionally violated this
4 chapter is made in a civil action brought pursuant to section
5 825.9, subsection 6. State funds shall continue to be denied
6 until eligibility to receive state funds is reinstated under
7 section 825.11. However, any state funds for the provision of
8 wearable body protective gear used for law enforcement purposes
9 shall not be denied under this section.

10 3. The department of management shall adopt rules pursuant
11 to chapter 17A to implement this section and section 825.11
12 uniformly across state agencies from which state funds are
13 distributed to local entities and campus police departments.

14 Sec. 12. NEW SECTION. **825.11 Reinstatement of eligibility**
15 **to receive state funds.**

16 1. Except as provided by subsection 5, no earlier
17 than twelve months after the date of a final judicial
18 determination that a local entity or campus police department
19 has intentionally violated the provisions of this chapter,
20 the local entity or campus police department may petition the
21 district court that heard the civil action brought pursuant to
22 section 825.9, subsection 6, to seek a declaratory judgment
23 that the local entity or campus police department is in full
24 compliance with this chapter.

25 2. A local entity or campus police department that petitions
26 the court as described by subsection 1 shall comply with
27 any document requests, including a request for supporting
28 documents, from the attorney general or county attorney
29 relating to the action.

30 3. If the court issues a declaratory judgment declaring
31 that the local entity or campus police department is in full
32 compliance with this chapter, the local entity's or campus
33 police department's eligibility to receive state funds is
34 reinstated beginning on the first day of the month following
35 the date on which the declaratory judgment is issued.

1 4. A local entity or campus police department shall not
2 petition the court as described in subsection 1 more than twice
3 in one twelve-month period.

4 5. A local entity or campus police department may petition
5 the court as described in subsection 1 before the date provided
6 in subsection 1 if the person who was the director or other
7 chief officer of the local entity or campus police department
8 at the time of the violation of this chapter is subsequently
9 removed from or otherwise leaves office.

10 6. A party shall not be entitled to recover any attorney
11 fees in a civil action described by subsection 1.

12 Sec. 13. NEW SECTION. **825.12 Attorney general database.**

13 The attorney general shall develop and maintain a searchable
14 database listing each local entity and campus police department
15 for which a final judicial determination described in section
16 825.10, subsection 2, has been made. The attorney general
17 shall post the database on the attorney general's internet
18 site.

19 Sec. 14. NEW SECTION. **825.13 Applicability.**

20 1. This chapter does not apply to a school district or
21 nonpublic school. This chapter does not apply to the release
22 of information contained in education records of an educational
23 agency or institution, except in conformity with the federal
24 Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
25 §1232g.

26 2. This chapter does not apply to a hospital if the hospital
27 is providing access to or delivering medical or health care
28 services as required under 42 U.S.C. §1395dd or 42 U.S.C.
29 §1396b(v). However, this chapter shall apply to any law
30 enforcement officer employed by a hospital.

31 Sec. 15. **APPLICABILITY.** This Act applies to the release of
32 a person from custody in this state on or after the effective
33 date of this Act.

34 Sec. 16. **IMPLEMENTATION OF ACT.** Section 25B.2, subsection
35 3, shall not apply to this Act.

1

EXPLANATION

2

The inclusion of this explanation does not constitute agreement with
3 the explanation's substance by the members of the general assembly.

3

4 This bill relates to the enforcement of immigration laws.

5 The bill defines immigration law as a law of this state or
6 a federal law relating to aliens, immigrants, or immigration,
7 including but not limited to the federal Immigration and
8 Nationality Act.

9 The bill provides that if a county or city or officer or
10 employee of a county or city or a division, department, or
11 other body that is part of a county or city releases from
12 custody a person who is the subject of an immigration detainer
13 request issued by United States immigration and customs
14 enforcement and received by the county or city, the county
15 or city shall be liable under Code chapter 670 for damages
16 resulting from any felony committed by the person in this
17 state within 10 years following the person's release. The
18 bill provides that a county or city is only liable if certain
19 conditions specified in the bill are met. The bill provides
20 that a county or city shall not be liable for damages sustained
21 by a person who is the subject of an immigration detainer
22 request following the person's release from custody by a county
23 or city.

24 The bill defines "immigration detainer request" as a
25 federal government request to a local entity or campus
26 police department to maintain temporary custody of an alien.
27 "Immigration detainer request" includes verbal and written
28 requests, including a United States department of homeland
29 security form I-247 or a similar or successor form.

30 The bill prohibits a state or local law enforcement officer
31 from stopping a motor vehicle or conducting a search of a
32 business or residence solely to enforce a federal immigration
33 law except under certain specified circumstances.

34 The bill permits a state or local law enforcement officer
35 to arrest a person on the grounds that the person is an alien

1 not lawfully present in the United States only if the officer
2 is acting in accordance with the bill and under authority
3 specifically granted under applicable federal immigration law.

4 The bill requires a law enforcement agency in this state
5 that has custody of a person subject to an immigration detainer
6 request issued by United States immigration and customs
7 enforcement to fully comply with any instruction made in the
8 detainer request and in any other legal document provided by
9 a federal agency.

10 The bill requires the court in a criminal proceeding in this
11 state in which the sentence requires a defendant subject to an
12 immigration detainer request to be confined in a correctional
13 facility, to issue an order at the time of sentencing, or at
14 a later date, requiring the correctional facility in which
15 the defendant is to be confined to require the defendant to
16 be transferred to serve in federal custody the final portion
17 of the defendant's sentence, not to exceed a period of seven
18 days, if a facility or officer determines that the change
19 in the place of confinement will facilitate the seamless
20 transfer of the defendant into federal custody. A defendant
21 shall be transferred pursuant to the bill only if appropriate
22 officers of the federal government consent to the transfer
23 of a defendant into federal custody under the circumstances
24 described in the bill.

25 The bill prohibits a local entity or campus police
26 department from adopting or enforcing a policy or take any
27 other action under which the entity or department prohibits or
28 discourages the enforcement of immigration laws.

29 The bill prohibits a local entity or campus police
30 department from prohibiting or discouraging a person who
31 is a law enforcement officer, corrections officer, county
32 attorney, city attorney, or other official who is employed by
33 or otherwise under the direction or control of the entity or
34 department from carrying out various activities specified in
35 the bill relating to enforcement of immigration laws.

1 The bill defines "local entity" as the governing body
2 of a city, county, institution governed by the state board
3 of regents, community college, or any other postsecondary
4 educational institution in this state that receives state
5 funds.

6 The bill defines "campus police department" as a law
7 enforcement agency of an institution governed by the board
8 of regents, a community college, or any other postsecondary
9 educational institution in this state that receives state
10 funds.

11 The bill requires each state or local law enforcement agency
12 subject to the bill to formalize in writing any unwritten,
13 informal policies relating to the enforcement of immigration
14 laws and to update the agency's policies to be consistent with
15 the bill and to require full compliance with the bill. These
16 actions must be carried out no later than January 1, 2018.

17 The bill prohibits a local entity, campus police department,
18 or a person employed by or otherwise under the direction or
19 control of an entity or department from considering race, skin
20 color, language spoken, or national origin while enforcing
21 immigration laws except to the extent permitted by the United
22 States Constitution or Iowa Constitution.

23 The bill prohibits a local entity, campus police department,
24 or a person employed by or otherwise under the direction or
25 control of a local entity or campus police department from
26 asking for or collecting any information from a victim of or
27 witness to an alleged public offense or from a person reporting
28 an alleged public offense, including the victim's, witness's,
29 or person's national origin, that is not pertinent to the
30 investigation of the alleged public offense.

31 The bill permits any person, including a federal agency, to
32 file a complaint with the attorney general or a county attorney
33 alleging that a local entity or campus police department has
34 violated or is violating the requirements of the bill if the
35 person offers evidence to support such an allegation. The

1 bill provides that a complaint shall not be valid unless the
2 attorney general or county attorney determines that a violation
3 of the requirements of the bill by a local entity or campus
4 police department was intentional.

5 If the attorney general or county attorney determines that
6 a complaint is valid, the bill requires the attorney general
7 or county attorney to provide notification to the entity or
8 department within 10 days of the determination. The bill
9 requires the entity or department to provide a response to
10 the attorney general or county attorney within 30 days of
11 receiving the notification. The bill specifies the content of
12 the notification and response.

13 The bill requires the attorney general or county attorney
14 to file a civil action in district court to enjoin any ongoing
15 violation of the requirements of the bill by a local entity or
16 campus police department no later than 40 days after the date
17 on which the notification is received.

18 The bill provides that, notwithstanding any other provision
19 of law to the contrary, a local entity, including any entity
20 under the jurisdiction of the local entity, or a campus police
21 department shall not be eligible to receive any state funds if
22 the local entity or department intentionally violates the bill.
23 State funds shall continue to be denied until eligibility to
24 receive state funds is reinstated as provided in the bill.

25 The bill provides that any state funds for the provision
26 of wearable body protective gear used for law enforcement
27 purposes shall not be denied in this way. The bill requires
28 the department of management to adopt rules to implement the
29 denial of and reinstatement of eligibility to receive state
30 funds uniformly across state agencies.

31 The bill permits a local entity or campus police department
32 to petition the district court that heard the civil action
33 brought pursuant to the bill to seek a declaratory judgment
34 that the entity or department is in full compliance with the
35 bill in order to restore the eligibility to receive state

1 funds.

2 The bill requires the attorney general to develop, post,
3 and maintain a searchable database listing each local entity
4 and campus police department for which a final judicial
5 determination that the entity or department has intentionally
6 violated the requirements of the bill has been made.

7 The bill does not apply to a school district or nonpublic
8 school. The bill does not apply to the release of information
9 contained in education records of an educational agency or
10 institution, except in conformity with the federal Family
11 Educational Rights and Privacy Act of 1974. The bill does not
12 apply to a hospital if the hospital is providing access to or
13 delivering medical or health care services as required under
14 federal laws specified in the bill. However, the bill does
15 apply to any law enforcement officer employed by a hospital.

16 The bill applies to the release of a person from custody in
17 this state on or after the effective date of the bill.

18 The bill may include a state mandate as defined in Code
19 section 25B.3. The bill makes inapplicable Code section 25B.2,
20 subsection 3, which would relieve a political subdivision from
21 complying with a state mandate if funding for the cost of
22 the state mandate is not provided or specified. Therefore,
23 political subdivisions are required to comply with any state
24 mandate included in the bill.