

Senate Study Bill 1172 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CHAIRPERSON GARRETT)

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 Sec. 2. NEW SECTION. 825.2 County and city liability —
34 failure to comply with immigration detainer request.

35 1. If a county or city or officer or employee of a county

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

9 a. The county or city did not detain the person as
10 requested.

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

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

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

20 Sec. 3. NEW SECTION. **825.3 Enforcement of federal**
21 **immigration law by law enforcement officers.**

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

31 2. A state or local law enforcement officer may arrest a
32 person on the grounds that the person is an alien not lawfully
33 present in the United States only if the officer is acting in
34 accordance with this chapter and under authority specifically
35 granted under applicable federal immigration law.

1 **Sec. 4. NEW SECTION. 825.4 Law enforcement agency duties —**
2 **immigration detainer requests.**

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

8 2. A law enforcement agency in this state shall presume an
9 immigration detainer request, whether written or verbal, is
10 based on probable cause and is otherwise valid.

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

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

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

35 3. A defendant shall be transferred pursuant to this section

1 only if appropriate officers of the federal government consent
2 to the transfer of a defendant into federal custody under the
3 circumstances described in this section.

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

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

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

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

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

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

26 (2) Maintaining the information.

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

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

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

1 Sec. 7. NEW SECTION. **825.7 Written policies.**

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

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

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

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

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

21 Sec. 9. NEW SECTION. **825.9 Complaints — notification —**
22 **civil action.**

23 1. Any person, including a federal agency, may file a
24 complaint with the attorney general or a county attorney
25 alleging that a local entity or campus police department has
26 violated or is violating this chapter if the person offers
27 evidence to support such an allegation. The person shall
28 include with the complaint any evidence the person has in
29 support of the complaint.

30 2. A local entity or campus police department for which the
31 attorney general or county attorney has received a complaint
32 pursuant to this section shall comply with any document
33 requests, including a request for supporting documents,
34 from the attorney general or county attorney relating to the
35 complaint.

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

5 4. If the attorney general or county attorney determines
6 that a complaint filed pursuant to this section against
7 a local entity or campus police department is valid, the
8 attorney general or county attorney, not later than ten days
9 after the date of such a determination, shall provide written
10 notification to the local entity or campus police department
11 by certified mail, with return receipt requested, stating all
12 of the following:

13 a. A complaint pursuant to this section has been filed and
14 the grounds for the complaint.

15 b. The attorney general or county attorney has determined
16 that the complaint is valid.

17 c. The attorney general or county attorney is authorized to
18 file a civil action in district court pursuant to subsection
19 6 to enjoin a violation of this chapter no later than forty
20 days after the date on which the notification is received if
21 the local entity or campus police department does not come into
22 compliance with the requirements of this chapter.

23 d. The local entity or campus police department and any
24 entity that is under the jurisdiction of the local entity or
25 campus police department will be denied state funds pursuant to
26 section 825.10 for the state fiscal year following the year in
27 which a final judicial determination in a civil action brought
28 under this section is made.

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

34 a. Copies of all of the local entity's or campus police
35 department's written policies relating to immigration

1 enforcement actions.

2 *b.* A copy of each immigration detainer request received by
3 the local entity or campus police department from a federal
4 agency.

5 *c.* A copy of each response sent by the local entity or
6 campus police department to an immigration detainer request
7 described by paragraph "*b*".

8 *d.* A description of all actions the local entity or campus
9 police department has taken or will take to correct any
10 violations of this chapter.

11 *e.* If applicable, any evidence that would refute the
12 allegations made in the complaint.

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

18 Sec. 10. NEW SECTION. **825.10 Denial of state funds.**

19 1. Notwithstanding any other provision of law to the
20 contrary, a local entity, including any entity under the
21 jurisdiction of the local entity, or a campus police department
22 shall be ineligible to receive any state funds if the local
23 entity or campus police department intentionally violates this
24 chapter.

25 2. State funds shall be denied to a local entity or campus
26 police department pursuant to subsection 1 by all state
27 agencies for each state fiscal year that begins after the date
28 on which a final judicial determination that the local entity
29 or campus police department has intentionally violated this
30 chapter is made in a civil action brought pursuant to section
31 825.9, subsection 6. State funds shall continue to be denied
32 until eligibility to receive state funds is reinstated under
33 section 825.11. However, any state funds for the provision of
34 wearable body protective gear used for law enforcement purposes
35 shall not be denied under this section.

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

5 **Sec. 11. NEW SECTION. 825.11 Reinstatement of eligibility**
6 **to receive state funds.**

7 1. Except as provided by subsection 5, no earlier
8 than twelve months after the date of a final judicial
9 determination that a local entity or campus police department
10 has intentionally violated the provisions of this chapter,
11 the local entity or campus police department may petition the
12 district court that heard the civil action brought pursuant to
13 section 825.9, subsection 6, to seek a declaratory judgment
14 that the local entity or campus police department is in full
15 compliance with this chapter.

16 2. A local entity or campus police department that petitions
17 the court as described by subsection 1 shall comply with
18 any document requests, including a request for supporting
19 documents, from the attorney general or county attorney
20 relating to the action.

21 3. If the court issues a declaratory judgment declaring
22 that the local entity or campus police department is in full
23 compliance with this chapter, the local entity's or campus
24 police department's eligibility to receive state funds is
25 reinstated beginning on the first day of the month following
26 the date on which the declaratory judgment is issued.

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

30 5. A local entity or campus police department may petition
31 the court as described in subsection 1 before the date provided
32 in subsection 1 if the person who was the director or other
33 chief officer of the local entity or campus police department
34 at the time of the violation of this chapter is subsequently
35 removed from or otherwise leaves office.

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

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

4 The attorney general shall develop and maintain a searchable
5 database listing each local entity and campus police department
6 for which a final judicial determination described in section
7 825.10, subsection 2, has been made. The attorney general
8 shall post the database on the attorney general's internet
9 site.

10 Sec. 13. NEW SECTION. **825.13 Applicability.**

11 1. This chapter does not apply to a school district or
12 nonpublic school. This chapter does not apply to the release
13 of information contained in education records of an educational
14 agency or institution, except in conformity with the federal
15 Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
16 §1232g.

17 2. This chapter does not apply to a hospital if the hospital
18 is providing access to or delivering medical or health care
19 services as required under 42 U.S.C. §1395dd or 42 U.S.C.
20 §1396b(v). However, this chapter shall apply to any law
21 enforcement officer employed by a hospital.

22 Sec. 14. **APPLICABILITY.** This Act applies to the release of
23 a person from custody in this state on or after the effective
24 date of this Act.

25 Sec. 15. **IMPLEMENTATION OF ACT.** Section 25B.2, subsection
26 3, shall not apply to this Act.

27 **EXPLANATION**

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

30 This bill relates to the enforcement of immigration laws.

31 The bill defines immigration law as a law of this state or
32 a federal law relating to aliens, immigrants, or immigration,
33 including but not limited to the federal Immigration and
34 Nationality Act.

35 The bill provides that if a county or city or officer or

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

15 The bill defines "immigration detainer request" as a
16 federal government request to a local entity or campus
17 police department to maintain temporary custody of an alien.
18 "Immigration detainer request" includes verbal and written
19 requests, including a United States department of homeland
20 security form I-247 or a similar or successor form.

21 The bill prohibits a state or local law enforcement officer
22 from stopping a motor vehicle or conducting a search of a
23 business or residence solely to enforce a federal immigration
24 law except under certain specified circumstances.

25 The bill permits a state or local law enforcement officer
26 to arrest a person on the grounds that the person is an alien
27 not lawfully present in the United States only if the officer
28 is acting in accordance with the bill and under authority
29 specifically granted under applicable federal immigration law.

30 The bill requires a law enforcement agency in this state
31 that has custody of a person subject to an immigration detainer
32 request issued by United States immigration and customs
33 enforcement to fully comply with any instruction made in the
34 detainer request and in any other legal document provided by a
35 federal agency. The bill requires a law enforcement agency in

1 this state to presume an immigration detainer request, whether
2 written or verbal, is based on probable cause and is otherwise
3 valid.

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

19 The bill prohibits a local entity or campus police
20 department from adopting or enforcing a policy or take any
21 other action under which the entity or department prohibits or
22 discourages the enforcement of immigration laws.

23 The bill prohibits a local entity or campus police
24 department from prohibiting or discouraging a person who
25 is a law enforcement officer, corrections officer, county
26 attorney, city attorney, or other official who is employed by
27 or otherwise under the direction or control of the entity or
28 department from carrying out various activities specified in
29 the bill relating to enforcement of immigration laws.

30 The bill defines "local entity" as the governing body
31 of a city, county, institution governed by the state board
32 of regents, community college, or any other postsecondary
33 educational institution in this state that receives state
34 funds.

35 The bill defines "campus police department" as a law

1 enforcement agency of an institution governed by the board
2 of regents, a community college, or any other postsecondary
3 educational institution in this state that receives state
4 funds.

5 The bill requires each state or local law enforcement agency
6 subject to the bill to formalize in writing any unwritten,
7 informal policies relating to the enforcement of immigration
8 laws and to update the agency's policies to be consistent with
9 the bill and to require full compliance with the bill. These
10 actions must be carried out no later than January 1, 2018.

11 The bill prohibits a local entity, campus police department,
12 or a person employed by or otherwise under the direction or
13 control of an entity or department from considering race, skin
14 color, language spoken, or national origin while enforcing
15 immigration laws except to the extent permitted by the United
16 States Constitution or Iowa Constitution.

17 The bill permits any person, including a federal agency, to
18 file a complaint with the attorney general or a county attorney
19 alleging that a local entity or campus police department has
20 violated or is violating the requirements of the bill if the
21 person offers evidence to support such an allegation. The
22 bill provides that a complaint shall not be valid unless the
23 attorney general or county attorney determines that a violation
24 of the requirements of the bill by a local entity or campus
25 police department was intentional.

26 If the attorney general or county attorney determines that
27 a complaint is valid, the bill requires the attorney general
28 or county attorney to provide notification to the entity or
29 department within 10 days of the determination. The bill
30 requires the entity or department to provide a response to
31 the attorney general or county attorney within 30 days of
32 receiving the notification. The bill specifies the content of
33 the notification and response.

34 The bill requires the attorney general or county attorney
35 to file a civil action in district court to enjoin any ongoing

1 violation of the requirements of the bill by a local entity or
2 campus police department no later than 40 days after the date
3 on which the notification is received.

4 The bill provides that, notwithstanding any other provision
5 of law to the contrary, a local entity, including any entity
6 under the jurisdiction of the local entity, or a campus police
7 department shall not be eligible to receive any state funds if
8 the local entity or department intentionally violates the bill.
9 State funds shall continue to be denied until eligibility to
10 receive state funds is reinstated as provided in the bill.
11 The bill provides that any state funds for the provision
12 of wearable body protective gear used for law enforcement
13 purposes shall not be denied in this way. The bill requires
14 the department of management to adopt rules to implement the
15 denial of and reinstatement of eligibility to receive state
16 funds uniformly across state agencies.

17 The bill permits a local entity or campus police department
18 to petition the district court that heard the civil action
19 brought pursuant to the bill to seek a declaratory judgment
20 that the entity or department is in full compliance with the
21 bill in order to restore the eligibility to receive state
22 funds.

23 The bill requires the attorney general to develop, post,
24 and maintain a searchable database listing each local entity
25 and campus police department for which a final judicial
26 determination that the entity or department has intentionally
27 violated the requirements of the bill has been made.

28 The bill does not apply to a school district or nonpublic
29 school. The bill does not apply to the release of information
30 contained in education records of an educational agency or
31 institution, except in conformity with the federal Family
32 Educational Rights and Privacy Act of 1974. The bill does not
33 apply to a hospital if the hospital is providing access to or
34 delivering medical or health care services as required under
35 federal laws specified in the bill. However, the bill does

1 apply to any law enforcement officer employed by a hospital.

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

4 The bill may include a state mandate as defined in Code
5 section 25B.3. The bill makes inapplicable Code section 25B.2,
6 subsection 3, which would relieve a political subdivision from
7 complying with a state mandate if funding for the cost of
8 the state mandate is not provided or specified. Therefore,
9 political subdivisions are required to comply with any state
10 mandate included in the bill.