

Senate File 2228 - Introduced

SENATE FILE 2228

BY WESTRICH

A BILL FOR

1 An Act relating to illegal reentry into the state by certain
2 aliens, prohibition on arrest in certain locations, orders
3 to return to a foreign nation, immunity from liability
4 and indemnification for enforcement actions, sentencing
5 restrictions, and providing penalties.

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

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

2 As used in this chapter:

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

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

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

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

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

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

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

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

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

22 (2) The person was excluded pursuant to 8 U.S.C.
23 §1225(c) because the defendant was excludable under 8 U.S.C.
24 §1182(a)(3)(B).

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

27 (4) The person was removed pursuant to 8 U.S.C.
28 §1231(a)(4)(B).

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

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

35 Sec. 3. NEW SECTION. 718C.3 Arrest prohibited in certain

1 **locations.**

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

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

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

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

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

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

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

27 2. The judge in a person's case at any time after the
28 person's initial appearance may, in lieu of continuing the
29 prosecution of or entering an adjudication regarding an offense
30 under this chapter, dismiss the charge pending against the
31 person and issue a written order in accordance with subsection
32 3.

33 3. A written order authorized by subsection 1 or 2 shall
34 discharge the person and require the person to return to the
35 foreign nation from which the person entered or attempted

1 to enter, and may be issued only if all of the following
2 requirements are met:

3 *a.* The person agrees to the order.

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

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

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

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

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

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

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

28 *a.* The manner of transportation of the person to a port of
29 entry.

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

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

1 described by subsection 2 or 4.

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

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

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

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

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

17 c. The person failed to comply with the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 1. Except as provided by subsection 4, an elected or
34 appointed state official, or a state employee or contractor,
35 is immune from liability for damages arising from a cause of

1 action under state law resulting from an action taken by the
2 official, employee, or contractor to enforce this chapter
3 during the course and scope of the official's, employee's, or
4 contractor's office, employment, or contractual performance for
5 or service on behalf of the state.

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

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

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

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

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

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

1 removal was outstanding.

2 The bill provides that the offense is an aggravated
3 misdemeanor, except that the offense is: a class "D" felony
4 if the person's removal was subsequent to a conviction for
5 commission of two or more misdemeanors involving drugs, crimes
6 against a person, or both; the person was excluded pursuant to
7 8 U.S.C. §1225(c) because the defendant was excludable under
8 8 U.S.C. §1182(a)(3)(B); the person was removed pursuant to
9 the provisions of 8 U.S.C. ch. 12, subch. V, or the person was
10 removed pursuant to 8 U.S.C. §1231(a)(4)(B). An offense is
11 a class "C" felony if the person was removed subsequent to a
12 conviction for the commission of a felony. The bill provides
13 that "removal" includes an order issued under the bill or
14 any other agreement in which an alien stipulates to removal
15 pursuant to a criminal proceeding under either federal or state
16 law. An aggravated misdemeanor is punishable by confinement
17 for no more than two years and a fine of at least \$855 but
18 not more than \$8,540. A class "D" felony is punishable by
19 confinement for no more than five years and a fine of at least
20 \$1,025 but not more than \$10,245. A class "C" felony is
21 punishable by confinement for no more than 10 years and a fine
22 of at least \$1,370 but not more than \$13,660.

23 The bill provides that a peace officer may not arrest or
24 detain a person for purposes of enforcing a provision of
25 the bill if the person is on the premises or grounds of: a
26 public or private primary or secondary school for educational
27 purposes; a church, synagogue, or other established place of
28 religious worship; a health care facility, provided that the
29 person is on the premises or grounds of the facility or office
30 for the purpose of receiving medical treatment; or a facility
31 that provides forensic medical examinations to sexual assault
32 survivors provided that the person is on the premises or
33 grounds of the facility for purposes of obtaining a forensic
34 medical examination and treatment.

35 The bill provides that a judge during a person's initial

1 appearance following an arrest for a violation of the bill
2 may, after making a determination that probable cause exists
3 for the arrest, order the person released from custody and
4 issue a written order requiring the person to return to the
5 foreign nation from which the person came. The judge in a
6 person's case at any time after the person's initial appearance
7 may, in lieu of continuing the prosecution of or entering an
8 adjudication regarding an offense under the bill, dismiss the
9 charge pending against the person and issue a written order
10 requiring the person to return to the foreign nation from which
11 the person came. A written order discharging the person and
12 requiring the person to return to the foreign nation from
13 which the person entered or attempted to enter may be issued
14 only if all of the following occur: the person agrees to
15 the order; the person has not previously been convicted of
16 an offense under the bill or previously obtained a discharge
17 under an order to return to the foreign nation from which the
18 person came; the person is not charged with another offense
19 that is punishable as an aggravated misdemeanor or any higher
20 category of offense; and the arresting law enforcement agency
21 has collected all available identifying information of the
22 person and has cross-referenced the collected information with
23 all relevant local, state, and criminal databases and federal
24 lists or classifications used to identify a person as a threat
25 or potential threat to national security.

26 Upon conviction for a violation of the bill, the bill
27 provides that the judge shall enter in the judgment in the case
28 an order requiring the person to return to the foreign nation
29 from which the person entered or attempted to enter. An order
30 issued under this provision takes effect on completion of the
31 term of confinement or imprisonment imposed by the judgment.

32 The bill provides that an order must include the manner of
33 transportation of the person to a port of entry and the law
34 enforcement officer or state agency responsible for monitoring
35 compliance with the order. Within seven days of an order's

1 issuance, the law enforcement officer or state agency required
2 to monitor compliance with the order shall report the issuance
3 of the order to the department of public safety for inclusion
4 in the computerized criminal history system.

5 The bill provides that a person who is an alien commits an
6 offense if the person has been charged with or convicted of an
7 offense under the bill, a judge has issued an order under the
8 bill for the person to return to the foreign nation from which
9 the person entered or attempted to enter, and the person failed
10 to comply with the order. An offense under this provision of
11 the bill is a class "C" felony.

12 The bill provides that a court may not abate the prosecution
13 of an offense under the bill on the basis that a federal
14 determination regarding the immigration status of the person is
15 pending or will be initiated.

16 The bill provides that a local government official,
17 employee, or contractor is immune from liability for damages
18 arising from a cause of action resulting from an action taken
19 to enforce the bill. A local government shall indemnify an
20 official, employee, or contractor of the local government
21 for damages arising from a cause of action under federal law
22 resulting from an action taken to enforce the bill.

23 The bill provides that indemnification payments made by a
24 local government shall not exceed \$100,000 to any one person,
25 \$300,000 for any single occurrence in the case of personal
26 injury or death, or \$10,000 for a single occurrence of property
27 damage.

28 If the court or jury determines that the local government
29 official, employee, or contractor acted in bad faith, with
30 conscious indifference, or with recklessness, the official,
31 employee, or contractor is not entitled to immunity or
32 indemnification.

33 The bill provides that an elected or appointed state
34 official, or a state employee or contractor, is immune from
35 liability for damages resulting from an action taken to enforce

1 the bill.

2 The bill provides that the state shall indemnify an elected
3 or appointed state official, or a state employee or contractor,
4 for damages arising from a cause of action under federal law
5 resulting from an action taken by the official, employee, or
6 contractor to enforce the bill. An indemnification payment
7 made to an elected or appointed state official, or a state
8 employee or contractor, is not subject to an indemnification
9 limit under the laws of this state.

10 If the court or jury determines that an elected or appointed
11 state official, or a state employee or contractor, acted in bad
12 faith, with conscious indifference, or with recklessness, the
13 elected or appointed state official, or a state employee or
14 contractor, is not entitled to immunity or indemnification.

15 The bill provides that a state official, employee, or
16 contractor who may be entitled to indemnification is entitled
17 to representation by the attorney general.

18 Current law generally provides that the trial court may,
19 upon a plea of guilty, a verdict of guilty, or a special
20 verdict upon which a judgment of conviction may be rendered,
21 defer judgment, defer sentencing, or suspend the sentence.
22 This provision does not apply to a forcible felony or to a
23 violation of Code chapter 709 (sexual abuse) committed by a
24 person who is a mandatory reporter of child abuse in which the
25 victim is a person who is under the age of 18.

26 The bill adds a violation of the bill to those offenses for
27 which the option to render a deferred judgment or sentence, or
28 a suspended sentence, does not apply.