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 4/24/2024 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[04/24/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5471_20240424.docx)

[04/24/2024-A](https://www.scstatehouse.gov/sess125_2023-2024/prever/5471_20240424a.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING article 18 to CHAPTER 3, title 23 so as to provide local law enforcement agencies may enter into Memorandums of Understanding with federal agencies to enforce immigration laws.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 3, Title 23 of the S.C. Code is amended by adding:

Article 18

Memorandums of Understanding Between Local Law Enforcement Agencies and Federal Agencies to Enforce Immigration Laws

 Section 23-3-1800. As used in this article:

 (1) “Foreign National” means an individual who is not a citizen of the United States.

 (2) “ICE” means the United States Immigration and Customs Enforcement Division of the Department of Homeland Security.

 (3) “Illegal alien” means an individual who is present in the United States in violation of the federal Immigration and Nationality Act.

 (4) “Immigration Detainer Request” means a federal government request to a local entity to maintain temporary custody of an alien, including a United States Department of Homeland Security Form I-247 document or a similar successor form.

 (5) “Jail or detention facility staff”, or “jail or detention facility staff member” means any employee of a jail, or detention facility including, but not limited to, a corrections officer, deputy assigned to a jail or detention facility, or administrative support staff.

 (6) “LESC” means the Law Enforcement Support Center of the United States Department of Homeland Security.

 (7) “SAVE” means the Systematic Alien Verification for Entitlement’s Program of the United States Department of Homeland Security.

 Section 23-3-1810. (A) State and local law enforcement agencies may enter into memorandums of understanding and agreements with the United States Department of Justice, Department of Homeland Security, and any other federal agency for the purpose of enforcing federal immigration and customs laws and the detention, removal, and investigation of illegal aliens and the immigration status of any person in this State. A law enforcement officer acting within the scope of his authority under any memorandum of understanding, agreement, or other authorization from the federal government must arrest, with probable cause, any individual suspected of being an illegal alien.

 (B) To the extent authorized by federal law, state and local government employees, including law enforcement officers and prosecuting attorneys, shall send, receive, and maintain information relating to the immigration status of any individual as reasonably needed for public safety purposes.

 (C) Except as provided by federal law, no state or local agency or department must be prohibited from utilizing available federal resources, including databases, equipment, grant funds, training, or participation in incentive programs, for any public safety purpose relating to the enforcement of state and federal immigration laws.

 (D) When reasonably possible, applicable state agencies shall consider incentive programs and grant funding for the purpose of assisting and encouraging state and local agencies and departments to enter into agreements with federal entities and to utilize federal resources consistent with this section.

 (E) If a state or local law enforcement officer has verification that a person is an illegal alien, the officer must transport the illegal alien to a federal facility in the State or any other temporary point of detention and must reasonably detain the illegal alien when authorized by federal law.

 (F) Nothing in this section must be construed to hinder or prevent a law enforcement officer or law enforcement agency from arresting or detaining any criminal suspect on other criminal charges.

 (G) When authorized by federal law, a state or local law enforcement officer must arrest any individual based on the individual’s status as an illegal alien or for a violation of any federal immigration law.

 (H) If, in the judgment of the Attorney General, an official, agency of this State, or any political subdivision thereof is in violation of this section, the Attorney General must report the violation to the Governor and the Comptroller, and that agency or political subdivision may not receive any funds, grants, or appropriations from the State until the violation has ceased, as certified by the Attorney General. Any appeal of the determination of the Attorney General shall be appealed to the circuit court.

 (I) A law enforcement officer or government official or employee must have immunity from any damages or liability when he acts in good faith to enforce immigration laws pursuant to an agreement with federal authorities to collect or share immigration status information, or in the performance of any provision of this section.

 Section 23-3-1820. (A) When a person is confined in a jail or detention facility, a reasonable effort must be made to determine his nationality.

 (B) When a failure of communication between jail or detention facility staff and an inmate as a result of language barriers arises, an interpreter must be used to assist with the booking and identification process.

 (C) If the inmate is unable to provide documentation indicating his lawful status, a jail or detention facility staff member shall contact the LESC or check the SAVE database to determine the inmate’s lawful status in the United States.

 (D) If the LESC requests a jail or detention facility staff member procure an immigration detainer for the inmate while the inmate is in custody, the inmate must not be released until after the contact is made. If the inmate has been released prior to the notification from the LESC, the LESC must be advised of this fact.

 (E) The LESC must automatically notify ICE and the appropriate state or local law enforcement agency of any inmate who is determined to be an illegal alien and the inmate’s immigration status must be recorded in his criminal record.

 (F) An inmate who is suspected to be an illegal alien must not be detained solely because of the unavailability of after-hours contact information to determine whether he is an illegal alien.

 (G) An inmate identified as an illegal alien must not be detained on the basis of being an illegal alien unless the LESC or ICE specifically provides written instructions for detaining the inmate as an illegal alien. The existence of an arrest warrant must be verified with ICE within twenty-four hours of the placement of the immigration detainer.

 (H) Inmates shall be held no longer than forty-eight hours pursuant to an immigration detainer or an immigration warrant, unless the warrant is signed by a federal judge or federal magistrate. An immigration warrant signed by any immigration official other than a federal judge or federal magistrate must be treated as an immigration detainer. If an immigration warrant signed by a federal judge or federal magistrate is not received by the jail or detention facility staff within forty-eight hours, or if ICE does not take custody of the inmate within forty-eight hours, the inmate must be eligible for release from custody. This subsection does not relieve the jail or detention facility staff of the requirement to notify the appropriate consulate of foreign nationals.

 (I) The jail or detention facility staff shall maintain in each inmate’s file a record of all communications with ICE. When a suspected foreign national is confined, for any period, in a county or municipal jail or a detention center, a reasonable effort must be made to verify that the foreign national has been admitted to the United States and, if lawfully admitted, that the lawful status has not expired. When a suspected foreign national is admitted into a jail or detention facility, a jail or detention facility staff member must obtain at least one of the following documents from the individual to determine whether he has been lawfully admitted to the United States:

 (1) a Form I-94 Arrival/Departure Record issued by the United States Department of Homeland Security;

 (2) a valid, unexpired passport indicating that a visa was issued;

 (3) a permanent resident alien card Form 551;

 (4) a valid Nexus card;

 (5) a valid global entry identification card issued by the United States Department of Homeland Security; or

 (6) a valid passport indicating the bearer is a citizen of a country participating in a visa waiver program administered by the United States Department of State.

 (J) If a suspected foreign national does not produce a copy of one of the documents set forth in this section, or if verification of any document is required, a jail or detention facility staff member must contact the LESC or ICE for a determination of the nationality and immigration status of the suspected foreign national.

 (K) If a newly admitted inmate claims to be a consular officer or to have diplomatic status and the inmate is unable to produce the proper credentials or verification of diplomatic status as required, a jail staff member must contact the United States Department of State during its normal working hours or the Command Center of the Office of Security of the United States Department of State outside of working hours to request verification of the inmate’s status as a consular officer or of other diplomatic status. Once an inmate’s status is verified as a consular officer or diplomat, he must be immediately released.

 (L) Nothing in this section shall be construed to deny an inmate bond or from being released from confinement when the inmate is otherwise eligible for release. However, upon verification that an inmate confined in a jail or detention facility is an illegal alien, the inmate must be detained, arrested, and transported as authorized by state and federal law.

 (M) A jail or detention facility staff member who violates this section:

 (1) for a first offense is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or;

 (2) for a second or subsequent offense is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

 Section 23-3-1830. (A) A jail or detention facility that has custody of an inmate who is subject to an immigration detainer request issued by ICE must:

 (1) comply with, honor, and fulfill any request made in the immigration detainer request; and

 (2) inform the inmate identified in the immigration detainer request that he is being held pursuant to an immigration detainer.

 (B) Subsection (A) does not apply to an inmate who has provided proof that he is a citizen of the United States. Proof of citizenship may include, but is not limited to:

 (1) a driver’s license or identification card issued by the Department of Motor Vehicles; or

 (2) a government-issued identification provided by the federal government or another state.

 Section 23-3-1840.  A jail or detention facility, at least quarterly, shall prepare a report to be posted on the jail’s or detention facility’s website and on SLED’s website that includes:

 (1) the total number of inmates booked into the jail or detention facility;

 (2) the total number of foreign national inmates included in the total provided for in item (1);

 (3) the total number of inquiries made to LESC or any other federal agency inquiring about the immigration status or prior arrests of foreign national inmates;

 (4) the total number of responses from any inquiry under item (3);

 (5) the total number of responses as provided for in item (4) that indicate a foreign national inmate to be unlawfully within the United States;

 (6) any information about the inmate’s lawful entry into the United States, including the date of entry and visa type, if the length of the inmate’s stay in the United States is not authorized by his visa;

 (7) the number of immigration detainers issued by the United States Immigration and Customs Enforcement Division of the Department of Homeland Security for inmates in the jail or detention facility; and

 (8) a statement by the person who administers the jail or detention facility verifying that the facility is in compliance with the provisions contained in Section 23-3-1820.

 Section 23-3-1850. A circuit court judge must set or deny bond and determine the conditions of release, pursuant to Section 17-15-30, for a person charged with a crime that carries a maximum sentence of three years or more and who is suspected to be an alien unlawfully present in the United States.

 Section 23-3-1860. Notwithstanding any other provision of law in this article to the contrary, an inmate who is determined to be in the United States unlawfully and is charged with a criminal offense that carries a maximum sentence of three years or more may not be released to ICE or any other entity for deportation until his charges have been disposed of and any sentence has been completed.

SECTION 2. This act takes effect upon approval by the Governor.

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