

117TH CONGRESS
1ST SESSION

S. 60

To provide for the effective use of immigration detainers to enhance public safety.

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2021

Mr. TILLIS (for himself, Mr. GRASSLEY, Ms. ERNST, Mr. INHOFE, Mr. ROUNDS, Mr. MORAN, Mr. HAWLEY, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the effective use of immigration detainers to enhance public safety.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Immigration Detainer Enforcement Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Sense of Congress.

Sec. 3. Purpose.

Sec. 4. Immigration detainer authorities of the Department of Homeland Security.

Sec. 5. Effective coordination with State, tribal, and local law enforcement agencies.

Sec. 6. Compensating States for detaining criminal aliens.

Sec. 7. Priority for distributing Federal funding and property to State and local law enforcement.

1 SEC. 2. SENSE OF CONGRESS.

2 It is the sense of Congress that—

3 (1) the removal of criminal aliens promotes
4 public safety, national security, border security, and
5 the integrity of the immigration system;

6 (2) detainers have proven to be a useful law en-
7 forcement tool that serve to expedite and improve
8 the efficiency of the removal process by enabling the
9 Department of Homeland Security to assume cus-
10 tody in a timely manner of aliens in the custody of
11 Federal, State, tribal, or local law enforcement agen-
12 cies; and

13 (3) several States and localities have limited
14 their cooperation with immigration detainers issued
15 by the Department of Homeland Security and lim-
16 ited the Department of Homeland Security's access
17 to information regarding the release of criminal
18 aliens in their custody, which has resulted in the re-
19 lease of dangerous criminal aliens into local commu-
20 nities.

21 SEC. 3. PURPOSE.

22 The purposes of this Act are—

1 (1) to limit recidivist criminal activity through
 2 the removal of criminal aliens released from Federal,
 3 State, tribal, or local custody;

4 (2) to facilitate cooperation between Federal,
 5 State, tribal, and local law enforcement agencies
 6 with regard to immigration enforcement and infor-
 7 mation sharing; and

8 (3) to limit the burden on Federal, State, tribal,
 9 and local law enforcement agencies that cooperate
 10 with the Department of Homeland Security in its
 11 prioritized immigration enforcement.

12 **SEC. 4. IMMIGRATION DETAINER AUTHORITIES OF THE DE-**
 13 **PARTMENT OF HOMELAND SECURITY.**

14 Section 287 of the Immigration and Nationality Act
 15 (8 U.S.C. 1357) is amended—

16 (1) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
 18 by striking “the Service authorized under regu-
 19 lations prescribed by the Attorney General” and
 20 inserting “the Department of Homeland Secu-
 21 rity authorized under regulations prescribed by
 22 the Secretary of Homeland Security”;

23 (B) by inserting “or her” after “his” each
 24 place such term appears;

(C) in paragraph (2), by striking “and is likely to escape before a warrant can be obtained for his arrest”; and

(D) in the undesignated matter following paragraph (5)—

(i) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(ii) by striking “Service” each place such term appears and inserting “Department of Homeland Security”; and

(2) by amending subsection (d) to read as follows:

“(d) DETAINER OF CRIMINAL ALIENS.—

“(1) IN GENERAL.—If an individual is arrested by a Federal, State, tribal, or local law enforcement official for a violation of any criminal law, the Secretary of Homeland Security (or his or her designee) may issue a detainer to the arresting agency if there is reason to believe the individual is an alien who may be removable from the United States. Notwithstanding any other provision of law, no court shall have jurisdiction to review the discretionary decision or action by the Secretary of Homeland Security (or

1 his or her designee) to issue a detainer under this
2 paragraph.

3 “(2) TRANSFER OF CUSTODY.—Upon the
4 issuance of a detainer by the Secretary of Homeland
5 Security (or his or her designee) with respect to an
6 alien described in paragraph (1), the arresting Fed-
7 eral, State, tribal, or local law enforcement agency
8 is authorized to maintain custody of the alien for a
9 period not to exceed 48 hours in order to transfer
10 custody of the alien to the Department of Homeland
11 Security.

12 “(3) INDEMNIFICATION.—

13 “(A) IN GENERAL.—Under such regula-
14 tions as the Secretary of Homeland Security
15 shall prescribe, the Secretary (or his or her des-
16 ignee) may enter into agreements with State,
17 tribal, and local law enforcement agencies to in-
18 demnify such agencies against claims (including
19 reasonable expenses of litigation or settlement)
20 by third parties for wrongful detention resulting
21 from detainers issued without reason to believe
22 that the individual is an alien who may be re-
23 movable from the United States.

24 “(B) LIMITATION.—Indemnification under
25 subparagraph (A) does not extend to claims re-

1 lating to the negligence or willful misconduct of
2 a Federal, State, tribal, or local law enforce-
3 ment agency or the conditions of detention in
4 the facility used by such agency to detain the
5 individual subject to the detainer.

6 “(C) ADDITIONAL CONDITIONS.—Each in-
7 demnification agreement entered into pursuant
8 to subparagraph (A) shall—

9 “(i) require the State, tribal, or local
10 law enforcement agency to notify the
11 United States Government of any suit or
12 claim against such agency for wrongful de-
13 tention;

14 “(ii) authorize the United States Gov-
15 ernment, at its elections, to control or as-
16 sist in the defense of such suit or claim;
17 and

18 “(iii) limit the amount of indemnifica-
19 tion to a sum certified by the Secretary (or
20 his or her designee) that is just and rea-
21 sonable.”.

1 **SEC. 5. EFFECTIVE COORDINATION WITH STATE, TRIBAL,**
2 **AND LOCAL LAW ENFORCEMENT AGENCIES.**

3 (a) IN GENERAL.—Section 642 of the Illegal Immi-
4 gration Reform and Immigrant Responsibility Act of 1996
5 (8 U.S.C. 1373) is amended to read as follows:

6 **“SEC. 642. COMMUNICATION AND COOPERATION BETWEEN**
7 **GOVERNMENT AGENCIES AND THE DEPART-**
8 **MENT OF HOMELAND SECURITY.**

9 “(a) IN GENERAL.—Notwithstanding any other pro-
10 vision of Federal, State, tribal, or local law, a Federal,
11 State, tribal, or local government entity or official may
12 not prohibit, or restrict in any way, any government entity
13 or official from sending to, or receiving from, the Depart-
14 ment of Homeland Security information regarding the citi-
15 zenship or immigration status (lawful or unlawful) of any
16 individual.

17 “(b) ADDITIONAL AUTHORITY OF GOVERNMENT EN-
18 TITIES.—Notwithstanding any other provision of Federal,
19 State, tribal, or local law, no person or agency may pro-
20 hibit, or restrict in any way, a Federal, State, tribal, or
21 local government entity from—

22 “(1) sending information regarding the citizen-
23 ship or immigration status (lawful or unlawful) of
24 any individual to, or requesting or receiving such in-
25 formation from, the Department of Homeland Secu-
26 rity;

1 “(2) exchanging citizenship or immigration sta-
2 tus information described in paragraph (1) with any
3 other Federal, State, tribal, or local government en-
4 tity;

5 “(3) providing the Department of Homeland
6 Security with access to information in Federal,
7 State, tribal, or local government databases regard-
8 ing individuals with respect to whom a detainer has
9 been issued, including when such individuals will be
10 released from criminal custody; or

11 “(4) maintaining custody of an individual pur-
12 suant to section 287(d)(2) of the Immigration and
13 Nationality Act (8 U.S.C. 1357(d)(2)).

14 “(c) OBLIGATION TO RESPOND TO INQUIRIES.—The
15 Secretary of Homeland Security shall respond to an in-
16 quiry by a Federal, State, tribal, or local government
17 agency that seeks to verify or ascertain the citizenship or
18 immigration status of any individual within the jurisdic-
19 tion of the agency for any purpose authorized by law, by
20 providing the requested verification or status informa-
21 tion.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 for the Illegal Immigration Reform and Immigrant Re-
24 sponsibility Act of 1996 (division C of Public Law 104—

1 208; 8 U.S.C. 1101 note) is amended by amending the
 2 item relating to 642 to read as follows:

“Sec. 642. Communication and cooperation between government agencies and
 the Department of Homeland Security.”.

3 **SEC. 6. COMPENSATING STATES FOR DETAINING CRIMINAL**
 4 **ALIENS.**

5 Section 241(i) of the Immigration and Nationality
 6 Act (8 U.S.C. 1231(i)) is amended to read as follows:

7 “(i) INCARCERATION OR DETENTION.—

8 “(1) DEFINED TERM.—In this subsection, the
 9 term ‘undocumented criminal alien’ means an alien
 10 who—

11 “(A) has been convicted of a felony or of
 12 two or more misdemeanors; and

13 “(B)(i) entered the United States without
 14 inspection or at any time or place other than as
 15 designated by the Secretary of Homeland Secu-
 16 rity;

17 “(ii) was the subject of exclusion, deporta-
 18 tion, or removal proceedings at the time the
 19 alien was taken into custody by the State or a
 20 political subdivision of the State; or

21 “(iii)(I) was admitted as a nonimmigrant;
 22 and

1 “(II) at the time the alien was taken into
2 custody by the State or a political subdivision
3 of the State—

4 “(aa) failed to maintain the non-
5 immigrant status in which the alien was
6 admitted or to which it was changed under
7 section 248; or

8 “(bb) failed to comply with the condi-
9 tions of any such status.

10 “(2) IN GENERAL.—If the governor of a State
11 (or, if appropriate, the chief executive officer of a
12 political subdivision of the State), exercising author-
13 ity with respect to the incarceration or detention of
14 an undocumented criminal alien, submits a written
15 request to the Attorney General, the Attorney Gen-
16 eral may—

17 “(A) enter into a contractual arrangement
18 providing for compensation to the State or a
19 political subdivision of the State, as may be ap-
20 propriate, with respect to the incarceration or
21 detention of the undocumented criminal alien;
22 or

23 “(B) take the undocumented criminal alien
24 into the custody of the Federal Government and
25 incarcerate or detain the alien.

1 “(3) DETENTION SECURITY.—In carrying out
2 paragraph (2), the Attorney General shall—

3 “(A) give priority to the Federal incarceration
4 ation of undocumented criminal aliens who have
5 committed aggravated felonies; and

6 “(B) ensure that undocumented criminal
7 aliens incarcerated or detained in Federal facilities
8 pursuant to this subsection are held in facilities
9 that provide a level of security appropriate to the crimes
10 for which they were
11 charged or convicted.

12 “(4) AMOUNT OF COMPENSATION.—

13 “(A) IN GENERAL.—Compensation provided for each day an undocumented criminal
14 alien is detained by a State or a political subdivision of a State pursuant to a contract under
15 paragraph (2)(A) shall be equal to the average
16 daily cost of incarceration or detention of a
17 prisoner in the relevant State, as determined by
18 the Attorney General.

19 “(B) CERTIFICATION REQUIREMENT.—

20 “(i) IN GENERAL.—The Secretary of
21 Homeland Security shall—
22
23

1 “(I) promulgate regulations es-
2 tablishing detainer compliance cri-
3 teria; and

4 “(II) periodically submit a certifi-
5 cation to the Attorney General that
6 identifies which States and political
7 subdivisions of a State have not com-
8 plied with detainer requests received
9 from the Department of Homeland
10 Security.

11 “(ii) FUNDING LIMITATION.—Funds
12 may only be provided to States and polit-
13 ical subdivisions of States under this sub-
14 section that—

15 “(I) are not identified in a cer-
16 tification described in clause (i)(II);
17 and

18 “(II) are cooperating with the
19 Secretary with respect to each de-
20 tainer lodged against an individual in
21 the custody of the State or political
22 subdivision of the State in accordance
23 with section 287(d) and the regula-
24 tions promulgated pursuant to clause
25 (i)(I).

1 “(C) EFFECT OF NONCOMPLIANCE.—Any
 2 State or political subdivision of a State that
 3 fails to substantially comply with detainers
 4 issued by the Department of Homeland Secu-
 5 rity shall be ineligible for any funding under
 6 this subsection during the fiscal year in which
 7 such failure occurs.

8 “(5) AUTHORIZATION OF APPROPRIATIONS.—

9 “(A) IN GENERAL.—There are authorized
 10 to be appropriated to carry out this sub-
 11 section—

12 “(i) \$750,000,000 for fiscal year
 13 2021;

14 “(ii) \$850,000,000 for fiscal year
 15 2022; and

16 “(iii) \$950,000,000 for each of the
 17 fiscal years 2023 through 2027.

18 “(B) LIMITATION.—Amounts appropriated
 19 pursuant to subparagraph (A) that are distrib-
 20 uted to a State or a political subdivision of a
 21 State may only be used for correctional pur-
 22 poses.”.

1 **SEC. 7. PRIORITY FOR DISTRIBUTING FEDERAL FUNDING**
2 **AND PROPERTY TO STATE AND LOCAL LAW**
3 **ENFORCEMENT.**

4 (a) ANNUAL CERTIFICATION.—The Secretary of
5 Homeland Security shall annually submit a written certifi-
6 cation to the Attorney General that identifies the States
7 and units of local government that are not complying with
8 detainers issued pursuant to section 287(d) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1357(d)).

10 (b) PRIORITY FOR COMPLIANT JURISDICTIONS.—The
11 Attorney General shall give priority to the jurisdictions
12 that are not listed in the certification described in sub-
13 section (a) when selecting recipients of—

14 (1) funding from the Edward Byrne Memorial
15 Justice Assistance Grant Program authorized under
16 title I of the Omnibus Crime Control and Safe
17 Streets Act of 1968 (34 U.S.C. 10151 et seq.);

18 (2) excess Federal equipment purchased pursu-
19 ant to section 281 of title 10, United States Code
20 (commonly referred to as the 1122 Program); and

21 (3) excess Federal property transferred pursu-
22 ant to section 2576a of title 10, United States Code
23 (commonly referred to as the 1033 Program).

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