

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3127

By Delegates Mazzocchi, Longanacre, Martin,
Crouse, Holstein, Ridenour, Kimble, Honaker, Street,
Brooks, and Warner

[Introduced January 27, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §7-28-1, §7-28-2, §7-28-3, §7-28-4, §7-28-5, §7-28-6, §7-28-7, §7-28-8, §7-
 3 28-9, §7-28-10, §7-28-11, §7-28-12, all relating to requiring state entities, local entities and
 4 law enforcement agencies to cooperate with the enforcement of immigration laws;
 5 providing for definitions; requiring that entities and agencies not prohibit the enforcement
 6 of immigration laws or cooperation with other governmental agencies to enforce
 7 immigration laws; providing for complaint procedures; providing for mandatory duties
 8 regarding immigration detainees; providing for actions to ensure compliance; providing for
 9 ineligibility for state funds; providing for rulemaking authority for the State Auditor;
 10 providing for mandatory agreements; providing for the Attorney General to defend good-
 11 faith compliance under certain circumstances; providing for a civil cause of action for
 12 damages; providing for a duty to report and Whistle-Blower protections; providing for
 13 implementation; providing for prohibiting discrimination; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. COOPERATION WITH FEDERAL IMMIGRATION ENFORCEMENT

§7-28-1. Definitions.

1 (a) "Federal immigration agency" means the United States Department of Justice and
 2 the United States Department of Homeland Security, a division within such an agency, including
 3 United States Immigration and Customs Enforcement and United States Customs and Border
 4 Protection, any successor agency, and any other federal agency charged with the enforcement of
 5 immigration law.

6 (b) "Immigration law" means the laws of this state or federal law relating to immigrants or
 7 immigration, including the Federal Immigration and Nationality Act 8 U.S.C. § 1101 et seq.

8 (c) "Immigration detainer" means a facially sufficient written or electronic request issued by
 9 a federal immigration agency using that agency's official form to request that another law
 10 enforcement agency detain a person based on probable cause to believe that the person to be

11 detained is a removable alien under federal immigration law, including detainers issued pursuant
12 to 8 U.S.C. Sections 1226 and 1357 along with a warrant described in paragraph (2) of this
13 subsection. For purposes of this subsection, an immigration detainer is deemed facially sufficient
14 if:

15 (1)(A) The federal immigration agency's official form is complete and indicates on its face
16 that the federal immigration official has probable cause to believe that the person to be detained is
17 a removable alien under federal immigration law; or

18 (B) The federal immigration agency's official form is incomplete and fails to indicate on its
19 face that the federal immigration official has probable cause to believe that the person to be
20 detained is a removable alien under federal immigration law, but is supported by an affidavit, order,
21 or other official documentation that indicates that the federal immigration agency has probable
22 cause to believe that the person to be detained is a removable alien under federal immigration law;
23 and

24 (2) The federal immigration agency supplies with its detention request a Form I-
25 200 Warrant for Arrest of Alien or a Form I-205 Warrant of Removal/Deportation or a successor
26 warrant or other warrant authorized by federal law.

27 (d) "Inmate" means a person in the custody of a law enforcement agency.

28 (e) "Law enforcement agency" means an agency in this state charged with enforcement of
29 federal, state, county, or municipal laws or with managing custody of persons in this state and
30 includes, but is not limited to, municipal police departments, sheriff's offices, county and state
31 police departments, state college and university police departments, county correctional
32 agencies, and the Division of Corrections and Rehabilitation.

33 (f) "Local entity" means:

34 (1) The governing body of a municipality, county, or other authority, subject to the laws of
35 this state;

36 (2) An officer or employee of or a division, department, or other body that is part of a

37 municipality, county, other authority, including a sheriff, municipal police department, municipal
38 attorney, or county attorney; or

39 (3) A district attorney or criminal district attorney.

40 (g) "State entity" means the State of West Virginia or any agency, office, board, bureau,
41 commission, department, branch, division, or institution thereof, including institutions under the
42 authority of the West Virginia Higher Education Policy Commission, the Community and Technical
43 System, and all other public postsecondary educational institutions in the state. The term includes
44 any officer, employee or agent of any of the aforesaid.

§7-28-2. Policies regarding immigration enforcement.

1 A state entity, local entity or law enforcement agency shall not adopt or maintain a law,
2 ordinance, resolution, rule, regulation, policy, directive, order, practice, procedure, or custom,
3 formal or informal, written or unwritten, which prohibits or materially restricts any person from
4 enforcing immigration laws, including but not limited to prohibiting or materially restricting any
5 person from:

6 (1) Inquiring into the immigration status of any person;

7 (2) With respect to information relating to the immigration status, lawful or unlawful, of any
8 person:

9 (A) Sending the information to or requesting or receiving the information from United
10 States Citizenship and Immigration Services or United States Immigration and Customs
11 Enforcement, including information regarding a person's place of birth;

12 (B) Maintaining the information; or

13 (C) Exchanging the information with another local entity, a state government entity, or a
14 federal government entity;

15 (3) Complying with an immigration detainer, including, but not limited to, by requiring a
16 judicial warrant or other judicial order prior to complying with an immigration detainer.

17 (4) Complying with a request from a federal immigration agency to notify the agency before

18 the release of an inmate.

19 (5) Providing a federal immigration agency with an inmate's incarceration status or release
20 date.

21 (6) Assisting or cooperating with a federal immigration agency, including by providing
22 enforcement assistance;

23 (7) Participating in any program or agreement authorized under Section 287 of the federal
24 Immigration and Nationality Act, 8 105 U.S.C. Section 1357.

25 (8) Permitting a federal immigration officer to enter and conduct enforcement activities at a
26 municipal or county jail to enforce federal immigration laws.

§7-28-3. Mandatory duties of law enforcement agencies regarding immigration detainees.

1 (a) A law enforcement agency that has custody of a person subject to an
2 immigration detainer shall:

3 (1) Provide notice to the judge authorized to grant or deny the person's release on bail or
4 bond that the person is subject to an immigration detainer;

5 (2) Record in the person's case file that the person is subject to an immigration
6 detainer; and

7 (3) Upon determining that the immigration detainer is facially sufficient as defined by §7-
8 28-1(c) of this code, comply with the requests made in the immigration detainer.

9 (b) A law enforcement agency that has custody of a person subject to an
10 immigration detainer shall not require a judicial warrant or other judicial order prior to complying
11 with the requests made in the immigration detainer.

12 (c) A law enforcement agency is not required to perform a duty imposed by subsection
13 (a) of this Code section with respect to a person who is transferred to the custody of the agency by
14 another law enforcement agency if the transferring agency performed that duty before the transfer.

15 (d) A judge who receives notice that a person is subject to an immigration detainer
16 shall cause the fact to be recorded in the court record, regardless of whether the notice is received

17 before or after a judgment in the case.

§7-28-4. Mandatory agreements for housing persons subject to immigration detainers.

1 (a) Each county jail, municipal jail, the Regional Jail and Correctional Facility Authority, and
2 the Division of Corrections and Rehabilitation shall enter into an agreement or agreements with a
3 federal immigration agency for temporarily housing persons who are the subject of immigration
4 detainers and for the payment of the costs of housing and detaining those persons.

5 (b) A compliant agreement under this section includes any contract with a federal
6 immigration agency for housing or detaining persons subject to immigration detainers, such as
7 basic ordering agreements, intergovernmental service agreements, agreements authorized by
8 Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. Section 1357, or successor
9 agreements or other similar agreements authorized by federal law.

§7-28-5. Complaint procedure; notice; equitable relief.

1 (a) Any person, including a federal agency, may file a complaint with the Attorney General
2 alleging that a state entity, local entity, or law enforcement agency has violated or is violating this
3 chapter if the person offers evidence to support such an allegation. The person shall include with
4 the complaint any evidence the person has in support of the complaint.

5 (b) A state entity, local entity, or law enforcement agency for which the Attorney General
6 has received a complaint pursuant to this section shall comply with any document requests,
7 including a request for supporting documents, from the Attorney General relating to the complaint.

8 (c) If the Attorney General determines that a complaint filed against a state entity,
9 local governmental entity, or law enforcement agency is facially sufficient, the Attorney General
10 may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in
11 Circuit Court for Kanawha County or in the Circuit Court for a county in which the principal office of
12 the entity or agency is located to compel the entity or agency that is suspected of violating
13 this chapter to comply.

14 (d) If a court finds a state entity, local entity, or law enforcement agency has violated this

15 chapter, the court shall immediately enjoin the violation. The court shall have continuing
 16 jurisdiction over the parties and subject matter and may enforce its orders with contempt
 17 proceedings as provided by law.

18 (e) An order approving a consent decree or granting any relief under this section shall
 19 include written findings of fact that describe with specificity the existence and nature of the
 20 violation.

21 (f) In an appeal of a suit brought under this section, the appellate court shall render its final
 22 order or judgment with the least possible delay.

§7-28-6. Denial of state funds; rule-making authority.

1 (a) A state entity, local entity or law enforcement agency may not receive state funds if the
 2 entity adopts or maintains a policy in violation of this chapter and does not come into compliance
 3 with this chapter within 90 days of receiving notice.

4 (b) State funds for a state entity, local entity or law enforcement agency shall be denied for
 5 the state fiscal year following the year in which a final judicial determination in an action brought
 6 under §7-28-5 of this code is made that the entity has intentionally violated this chapter.

7 (c) The State Auditor shall adopt rules to implement this section among state agencies
 8 from which state funds are distributed to a municipality or county pursuant to §29B-3-1 of this
 9 code.

§7-28-7. Attorney General to defend good-faith compliance upon request.

1 (a) The Attorney General shall defend a local entity or law enforcement agency in any
 2 action in any court if:

3 (1) The executive head or governing body, as applicable, of the local entity or law
 4 enforcement agency requests the Attorney General 's assistance in the defense; and

5 (2) The Attorney General determines that the cause of action arises out of a claim involving
 6 the local governmental entity's or law enforcement agency's good-faith compliance with this
 7 chapter.

8 (b) If the Attorney General defends a local entity or law enforcement agency under this
 9 Code section, the state shall be liable for the expenses, costs, judgment, or settlement of the
 10 claims arising out of the representation. The Attorney General may settle or compromise any and
 11 all such claims.

12 (c) The state shall not be liable for any expenses, costs, judgments, or settlements of
 13 any claims against a local entity or law enforcement agency that is not represented by the Attorney
 14 General under this section.

§7-28-8. Duty to report violations; whistle-blower protections.

1 (a) An official, representative, agent, or employee of a state entity, local entity, or law
 2 enforcement agency shall promptly report a known or probable violation of this chapter to the
 3 Attorney General.

4 (b) A state entity, local entity, or law enforcement agency shall not discharge, threaten, or
 5 otherwise discriminate or retaliate against any official, representative, agent, or employee for
 6 complying with subsection (a) of this section.

7 (c) All provisions of §6C-1-1 et seq. of this code, the Whistle-Blower Law, shall apply to an
 8 official, representative, agent, or employee of a state entity, local governmental entity, or law
 9 enforcement agency who is discharged, threatened, or otherwise discriminated or retaliated
 10 against because he or she complied with subsection (a) of this section.

§7-28-9. Civil cause of action for damages.

1 (a) A person injured by the tortious acts or omissions of a person unlawfully present in
 2 the United States, or the personal representative of a person killed by the tortious acts
 3 or omissions of a person unlawfully present in the United States, shall have a cause of action for
 4 damages against a state entity, local entity, or law enforcement agency upon proof by the
 5 preponderance of the evidence of:

6 (1) The existence of a policy in violation of this chapter by such state entity, local entity, or
 7 law enforcement agency; and

8 (2) A failure to comply with this chapter resulting in such person having access to
9 the person injured or killed when the tortious acts or omissions occurred.

10 (b) Sovereign immunity and governmental immunity of state entities, local entities, or law
11 enforcement agencies is expressly waived to the extent of liability created by this section.

12 (c) Trial by jury is a matter of right in an action brought under this section.

13 (d) The court in an action brought under this section may award reasonable costs
14 and attorneys' fees to the prevailing party.

§7-28-10. Written policies.

1 On or before September 1, 2023, every law enforcement agency shall: (1) Formalize in
2 writing any unwritten, informal policies relating to the enforcement of immigration laws; and (2)
3 Update the agency's policies to be consistent with this chapter, to require each officer or other
4 employee of the law enforcement agency to fully comply with this chapter, and to prohibit an officer
5 or other employee of the law enforcement agency from preventing law enforcement agency
6 personnel from fully complying with this chapter.

§7-28-11. Implementation; discrimination prohibited.

1 (a) This chapter shall be implemented in a manner consistent with federal laws
2 and regulations governing immigration, protecting the civil rights of all persons, and respecting the
3 privileges and immunities of United States citizens.

4 (b) A state entity, local governmental entity, or law enforcement agency, or a
5 person employed by or otherwise under the direction or control of a state entity,
6 local governmental entity, or law enforcement agency, shall not base its actions under this chapter
7 on the gender, race, color, religion, language, national origin, or physical disability of a person
8 except to the extent authorized by the United States Constitution, the Constitution of the State of
9 West Virginia, or federal law.

§7-28-12. Severability.

1 The provisions of this article are severable and accordingly, if any part of this article is

- 2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
- 3 of the remaining provisions of this article.

NOTE: The purpose of this bill is to require state entities, local entities and law enforcement agencies to cooperate with the enforcement of immigration laws. The bill provides for definitions. The bill requires that entities and agencies not prohibit the enforcement of immigration laws or cooperation with other governmental agencies to enforce immigration laws. The bill provides for complaint procedures. The bill provides for mandatory duties regarding immigration detainees. The bill provides for actions to ensure compliance. The bill provides for ineligibility for state funds. The bill provides for rulemaking authority for the State Auditor. The bill provides for mandatory agreements. The bill provides for the Attorney General to defend good-faith compliance under certain circumstances. The bill provides for a civil cause of action for damages. The bill provides for a duty to report and Whistle-Blower protections. The bill provides for implementation. The bill provides for prohibiting discrimination. The bill provides for severability.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.