

116TH CONGRESS
1ST SESSION

S. 2739

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2019

Mr. TILLIS (for himself, Mr. GRASSLEY, Mr. PERDUE, Mrs. BLACKBURN, Mr. CORNYN, Ms. ERNST, and Mr. COTTON) 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 2019”.

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

19 (2) by amending subsection (d) to read as fol-
 20 lows:

21 “(d) DETAINER OF CRIMINAL ALIENS.—

22 “(1) IN GENERAL.—If an individual is arrested
 23 by a Federal, State, tribal, or local law enforcement
 24 official for a violation of any criminal law, the Sec-
 25 retary of Homeland Security (or his or her designee)

1 may issue a detainer to the arresting agency if there
2 is reason to believe the individual is an alien who
3 may be removable from the United States. Notwith-
4 standing any other provision of law, no court shall
5 have jurisdiction to review the discretionary decision
6 or action by the Secretary of Homeland Security (or
7 his or her designee) to issue a detainer under this
8 paragraph.

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

18 “(3) INDEMNIFICATION.—

19 “(A) IN GENERAL.—Under such regula-
20 tions as the Secretary of Homeland Security
21 shall prescribe, the Secretary (or his or her des-
22 ignee) may enter into agreements with State,
23 tribal, and local law enforcement agencies to in-
24 demnify such agencies against claims (including
25 reasonable expenses of litigation or settlement)

1 by third parties for wrongful detention resulting
2 from detainers issued without reason to believe
3 that the individual is an alien who may be re-
4 movable from the United States.

5 “(B) LIMITATION.—Indemnification under
6 subparagraph (A) does not extend to claims re-
7 lating to the negligence or willful misconduct of
8 a Federal, State, tribal, or local law enforce-
9 ment agency or the conditions of detention in
10 the facility used by such agency to detain the
11 individual subject to the detainer.

12 “(C) ADDITIONAL CONDITIONS.—Each in-
13 demnification agreement entered into pursuant
14 to subparagraph (A) shall—

15 “(i) require the State, tribal, or local
16 law enforcement agency to notify the
17 United States Government of any suit or
18 claim against such agency for wrongful de-
19 tention;

20 “(ii) authorize the United States Gov-
21 ernment, at its elections, to control or as-
22 sist in the defense of such suit or claim;
23 and

24 “(iii) limit the amount of indemnifica-
25 tion to a sum certified by the Secretary (or

1 his or her designee) that is just and rea-
 2 sonable.”.

3 **SEC. 5. EFFECTIVE COORDINATION WITH STATE, TRIBAL,**
 4 **AND LOCAL LAW ENFORCEMENT AGENCIES.**

5 (a) IN GENERAL.—Section 642 of the Illegal Immi-
 6 gration Reform and Immigrant Responsibility Act of 1996
 7 (8 U.S.C. 1373) is amended to read as follows:

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

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

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

24 “(1) sending information regarding the citizen-
 25 ship or immigration status (lawful or unlawful) of

1 any individual to, or requesting or receiving such in-
2 formation from, the Department of Homeland Secu-
3 rity;

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

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

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

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

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 for the Illegal Immigration Reform and Immigrant Re-
 3 sponsibility Act of 1996 (division C of Public Law 104–
 4 208; 8 U.S.C. 1101 note) is amended by amending the
 5 item relating to 642 to read as follows:

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

6 **SEC. 6. COMPENSATING STATES FOR DETAINING CRIMINAL**
 7 **ALIENS.**

8 Section 241 of the Immigration and Nationality Act
 9 (8 U.S.C. 1231(i)) is amended to read as follows:

10 “(i) INCARCERATION OR DETENTION.—

11 “(1) DEFINED TERM.—In this subsection, the
 12 term ‘undocumented criminal alien’ means an alien
 13 who—

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

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

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

1 “(iii)(I) was admitted as a nonimmigrant;
2 and

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

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

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

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

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

1 “(B) take the undocumented criminal alien
2 into the custody of the Federal Government and
3 incarcerate or detain the alien.

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

6 “(A) give priority to the Federal incarcer-
7 ation of undocumented criminal aliens who have
8 committed aggravated felonies; and

9 “(B) ensure that undocumented criminal
10 aliens incarcerated or detained in Federal facili-
11 ties pursuant to this subsection are held in fa-
12 cilities that provide a level of security appro-
13 priate to the crimes for which they were
14 charged or convicted.

15 “(4) AMOUNT OF COMPENSATION.—

16 “(A) IN GENERAL.—Compensation pro-
17 vided for each day an undocumented criminal
18 alien is detained by a State or a political sub-
19 division of a State pursuant to a contract under
20 paragraph (2)(A) shall be equal to the average
21 daily cost of incarceration or detention of a
22 prisoner in the relevant State, as determined by
23 the Attorney General.

24 “(B) CERTIFICATION REQUIREMENT.—

1 “(i) IN GENERAL.—The Secretary of
2 Homeland Security shall—

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

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

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

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

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

1 tions promulgated pursuant to clause
2 (i)(I).

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

10 “(5) AUTHORIZATION OF APPROPRIATIONS.—

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

14 “(i) \$750,000,000 for fiscal year
15 2020;

16 “(ii) \$850,000,000 for fiscal year
17 2021; and

18 “(iii) \$950,000,000 for each of the
19 fiscal years 2022 through 2026.

20 “(B) LIMITATION.—Amounts appropriated
21 pursuant to subparagraph (A) that are distrib-
22 uted to a State or a political subdivision of a
23 State may only be used for correctional pur-
24 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).

