

SUMMARY OF NO. 19-15

This proposed law would provide new authority to state and local law enforcement officers to detain someone who would otherwise be released in order to transfer custody to federal immigration officials, if such federal officials assert that the person is subject to deportation and if specific facts indicate that the person poses a threat to public safety.

The proposed law would authorize continued detention where federal immigration officials request it on the basis that the detained person may be subject to removal from the United States and provide an administrative warrant for the person's deportation, removal, or arrest. The proposed law would authorize the detention for a reasonable (but unspecified) period of time after the person would otherwise be released from state custody in order to allow that person to be transferred to federal custody. Such detention could exceed 12 hours only if a state court determined that there was probable cause to believe that the person was subject to removal.

Before acting on a detention request from federal immigration officials, the state or local agency with custody of the person would need to determine that whether specific facts indicate that the person poses a threat to public safety. Such facts could include suspected terrorism or espionage or past conviction of certain state or federal felonies or misdemeanors.

The proposed law would require a state or local agency that chose to exercise this detention authority to designate supervisory employees responsible for making the public safety determination under written policies created by the agency.

Detentions lasting longer than 12 hours would require a written determination from a state court that there is probable cause to believe that the person detained is removable. If the court determines that there is no such probable cause, the detained person would be released forthwith. The person detained would have no right to participate in this judicial proceeding, either personally or through a lawyer. The court's determination would be open for inspection by the public.

The proposed law states that it is not to be construed to give rise to a private right of action or to make unlawful any arrest which would otherwise be lawful. The proposed law also states that, if any aspect of it were declared invalid, the other parts of the proposed law would stay in effect.

The proposed law would take effect on January 1, 2021.