
SENATE BILL 5346

State of Washington

67th Legislature

2021 Regular Session

By Senators Fortunato and Wagoner

Read first time 01/25/21. Referred to Committee on Law & Justice.

1 AN ACT Relating to federal immigration enforcement; adding a new
2 chapter to Title 43 RCW; and repealing RCW 43.17.420, 43.330.510,
3 43.10.310, 43.17.425, 10.93.160, and 43.10.315.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The
6 legislature finds that it is an important state interest to cooperate
7 and assist the federal government in the enforcement of federal
8 immigration laws within this state.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

12 (1) "Federal immigration agency" means the United States
13 department of justice and the United States department of homeland
14 security, a division within such an agency, including United States
15 immigration and customs enforcement and United States customs and
16 border protection, any successor agency, and any other federal agency
17 charged with the enforcement of immigration law.

18 (2) "Immigration detainer" means a facially sufficient written or
19 electronic request issued by a federal immigration agency using that
20 agency's official form to request that another law enforcement agency

1 detain a person based on probable cause to believe that the person to
2 be detained is a removable alien under federal immigration law,
3 including detainers issued pursuant to 8 U.S.C. Secs. 1226 and 1357
4 along with a warrant described in (b)(ii) of this subsection. For
5 purposes of this subsection, an immigration detainer is deemed
6 facially sufficient if:

7 (a) The federal immigration agency's official form is complete
8 and indicates on its face that the federal immigration official has
9 probable cause to believe that the person to be detained is a
10 removable alien under federal immigration law; or

11 (b)(i) The federal immigration agency's official form is
12 incomplete and fails to indicate on its face that the federal
13 immigration official has probable cause to believe that the person to
14 be detained is a removable alien under federal immigration law, but
15 is supported by an affidavit, order, or other official documentation
16 that indicates that the federal immigration agency has probable cause
17 to believe that the person to be detained is a removable alien under
18 federal immigration law; and

19 (ii) The federal immigration agency supplies with its detention
20 request a form I-200 warrant for arrest of alien or a form I-205
21 warrant of removal/deportation or a successor warrant or other
22 warrant authorized by federal law.

23 (3) "Inmate" means a person in the custody of a law enforcement
24 agency.

25 (4) "Law enforcement agency" means an agency in this state
26 charged with enforcement of state, county, municipal, or federal laws
27 or with managing custody of detained persons in this state and
28 includes municipal police departments, sheriff's offices, state
29 police departments, state university and college police departments,
30 county correctional agencies, and the department of corrections.

31 (5) "Local governmental entity" means any county, municipality,
32 or other political subdivision of this state.

33 (6) "Sanctuary policy" means a law, policy, practice, procedure,
34 or custom adopted or allowed by a state entity or local governmental
35 entity which prohibits or impedes a law enforcement agency from
36 complying with 8 U.S.C. Sec. 1373 or which prohibits or impedes a law
37 enforcement agency from communicating or cooperating with a federal
38 immigration agency so as to limit such law enforcement agency in, or
39 prohibit the agency from:

40 (a) Complying with an immigration detainer;

1 (b) Complying with a request from a federal immigration agency to
2 notify the agency before the release of an inmate or detainee in the
3 custody of the law enforcement agency;

4 (c) Providing a federal immigration agency access to an inmate
5 for interview;

6 (d) Participating in any program or agreement authorized under
7 section 287 of the immigration and nationality act, 8 U.S.C. Sec.
8 1357; or

9 (e) Providing a federal immigration agency with an inmate's
10 incarceration status or release date.

11 (7) "State entity" means the state or any office, board, bureau,
12 commission, department, branch, division, or institution thereof,
13 including public institutions of higher education.

14 NEW SECTION. **Sec. 3.** SANCTUARY POLICIES PROHIBITED. A state
15 entity, law enforcement agency, or local governmental entity may not
16 adopt or have in effect a sanctuary policy.

17 NEW SECTION. **Sec. 4.** COOPERATION WITH FEDERAL IMMIGRATION
18 AUTHORITIES. (1) A law enforcement agency shall use best efforts to
19 support the enforcement of federal immigration law. This subsection
20 applies to an official, representative, agent, or employee of the
21 entity or agency only when he or she is acting within the scope of
22 his or her official duties or within the scope of his or her
23 employment.

24 (2) Except as otherwise expressly prohibited by federal law, a
25 state entity, local governmental entity, or law enforcement agency,
26 or an employee, agent, or representative of the entity or agency, may
27 not prohibit or in any way restrict a law enforcement agency from
28 taking any of the following actions with respect to information
29 regarding a person's immigration status:

30 (a) Sending the information to or requesting, receiving, or
31 reviewing the information from a federal immigration agency for
32 purposes of this chapter;

33 (b) Recording and maintaining the information for purposes of
34 this chapter;

35 (c) Exchanging the information with a federal immigration agency
36 or another state entity, local governmental entity, or law
37 enforcement agency for purposes of this chapter;

1 (d) Using the information to comply with an immigration detainer;
2 or

3 (e) Using the information to confirm the identity of a person who
4 is detained by a law enforcement agency.

5 (3)(a) For purposes of this subsection, the term "applicable
6 criminal case" means a criminal case in which:

7 (i) The judgment requires the defendant to be confined in a
8 secure correctional facility; and

9 (ii) The judge:

10 (A) Indicates in the record under section 5 of this act that the
11 defendant is subject to an immigration detainer; or

12 (B) Otherwise indicates in the record that the defendant is
13 subject to a transfer into federal custody.

14 (b) In an applicable criminal case, when the judge sentences a
15 defendant who is the subject of an immigration detainer to
16 confinement, the judge shall issue an order requiring the secure
17 correctional facility in which the defendant is to be confined to
18 reduce the defendant's sentence by a period of not more than twelve
19 days on the facility's determination that the reduction in sentence
20 will facilitate the seamless transfer of the defendant into federal
21 custody. For purposes of this subsection, the term "secure
22 correctional facility" means a correctional institution operated by
23 the state, a county, or a municipality.

24 (c) If the information specified in (a)(ii)(A) and (B) of this
25 subsection is not available at the time the sentence is pronounced in
26 the case, but is received by a law enforcement agency afterwards, the
27 law enforcement agency shall notify the judge who shall issue the
28 order described by (b) of this subsection as soon as the information
29 becomes available.

30 (4) When a county correctional facility or the department of
31 corrections receives verification from a federal immigration agency
32 that a person subject to an immigration detainer is in the law
33 enforcement agency's custody, the agency may securely transport the
34 person to a federal facility in this state or to another point of
35 transfer to federal custody outside the jurisdiction of the law
36 enforcement agency. The law enforcement agency may transfer a person
37 who is subject to an immigration detainer and is confined in a secure
38 correctional facility to the custody of a federal immigration agency
39 not earlier than twelve days before his or her release date. A law
40 enforcement agency shall obtain judicial authorization before

1 securely transporting an alien to a point of transfer outside of this
2 state.

3 (5) This section does not require a state entity, local
4 governmental entity, or law enforcement agency to provide a federal
5 immigration agency with information related to a victim of or a
6 witness to a criminal offense if the victim or witness timely and in
7 good faith responds to the entity's or agency's request for
8 information and cooperation in the investigation or prosecution of
9 the offense.

10 (6) A state entity, local governmental entity, or law enforcement
11 agency that, pursuant to subsection (5) of this section, withholds
12 information regarding the immigration information of a victim of or
13 witness to a criminal offense shall document the victim's or
14 witness's cooperation in the entity's or agency's investigative
15 records related to the offense and shall retain the records for at
16 least ten years for the purpose of audit, verification, or inspection
17 by the state auditor.

18 (7) This section does not authorize a law enforcement agency to
19 detain an alien unlawfully present in the United States pursuant to
20 an immigration detainer solely because the alien witnessed or
21 reported a crime or was a victim of a criminal offense.

22 (8) This section does not apply to any alien unlawfully present
23 in the United States if he or she is or has been a necessary witness
24 or victim of a crime of domestic violence, rape, sexual exploitation,
25 sexual assault, murder, manslaughter, assault, battery, human
26 trafficking, kidnapping, false imprisonment, involuntary servitude,
27 fraud in foreign labor contracting, blackmail, extortion, or witness
28 tampering.

29 NEW SECTION. **Sec. 5.** DUTIES RELATED TO IMMIGRATION DETAINERS.

30 (1) A law enforcement agency that has custody of a person subject to
31 an immigration detainer issued by a federal immigration agency shall:

32 (a) Provide to the judge authorized to grant or deny the person's
33 release on bail notice that the person is subject to an immigration
34 detainer;

35 (b) Record in the person's case file that the person is subject
36 to an immigration detainer; and

37 (c) Upon determining that the immigration detainer is in
38 accordance with section 2(2) of this act, comply with the requests
39 made in the immigration detainer.

1 (2) A law enforcement agency is not required to perform a duty
2 imposed by subsection (1)(a) or (b) of this section with respect to a
3 person who is transferred to the custody of the agency by another law
4 enforcement agency if the transferring agency performed that duty
5 before the transfer.

6 (3) A judge who receives notice that a person is subject to an
7 immigration detainer shall cause the fact to be recorded in the court
8 record, regardless of whether the notice is received before or after
9 a judgment in the case.

10 NEW SECTION. **Sec. 6.** REIMBURSEMENT OF COSTS. Each county
11 correctional facility shall enter into an agreement or agreements
12 with a federal immigration agency for temporarily housing persons who
13 are the subject of immigration detainers and for the payment of the
14 costs of housing and detaining those persons. A compliant agreement
15 may include any contract between a correctional facility and a
16 federal immigration agency for housing or detaining persons subject
17 to immigration detainers, such as basic ordering agreements in effect
18 on or after the effective date of this section, agreements authorized
19 by section 287 of the immigration and nationality act, 8 U.S.C. Sec.
20 1357, or successor agreements and other similar agreements authorized
21 by federal law.

22 NEW SECTION. **Sec. 7.** ENFORCEMENT. (1) Any executive or
23 administrative state, county, or municipal officer who violates his
24 or her duties under this chapter may be subject to action by the
25 attorney general in the exercise of his or her authority under the
26 state Constitution and state law. Pursuant to existing law, the
27 attorney general may initiate judicial proceedings in the name of the
28 state against such officers to enforce compliance with any duty under
29 this chapter or restrain any unauthorized act contrary to this
30 chapter.

31 (2) In addition, the attorney general may file suit against a
32 local governmental entity or local law enforcement agency in a court
33 of competent jurisdiction for declaratory or injunctive relief for a
34 violation of this chapter.

35 (3) If a local governmental entity or local law enforcement
36 agency violates this chapter, the court must enjoin the unlawful
37 sanctuary policy. The court has continuing jurisdiction over the

1 parties and subject matter and may enforce its orders with the
2 initiation of contempt proceedings as provided by law.

3 (4) An order approving a consent decree or granting an injunction
4 must include written findings of fact that describe with specificity
5 the existence and nature of the sanctuary policy that violates this
6 chapter.

7 NEW SECTION. **Sec. 8.** EDUCATION RECORDS. This chapter does not
8 apply to the release of information contained in education records of
9 an educational agency or institution, except in conformity with the
10 family educational rights and privacy act of 1974, 20 U.S.C. Sec.
11 1232g.

12 NEW SECTION. **Sec. 9.** DISCRIMINATION PROHIBITED. A state entity,
13 a local governmental entity, or a law enforcement agency, or a person
14 employed by or otherwise under the direction or control of the entity
15 or agency, may not base its actions under this chapter on the gender,
16 race, religion, national origin, or physical disability of a person
17 except to the extent authorized by the United States Constitution or
18 the state Constitution.

19 NEW SECTION. **Sec. 10.** EXISTING POLICIES. A sanctuary policy, as
20 defined in section 2 of this act, that is in effect on the effective
21 date of this section violates the public policy of this state and
22 must be repealed within ninety days after that date.

23 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
24 each repealed:

25 (1) RCW 43.17.420 (Immigration and citizenship status—
26 Definitions) and 2019 c 440 s 2;

27 (2) RCW 43.330.510 (Keep Washington working statewide work group)
28 and 2019 c 440 s 3;

29 (3) RCW 43.10.310 (Immigration enforcement model policies—
30 Adoption by schools, health facilities, courthouses) and 2019 c 440 s
31 4;

32 (4) RCW 43.17.425 (Immigration and citizenship status—State
33 agency restrictions) and 2019 c 440 s 5;

34 (5) RCW 10.93.160 (Immigration and citizenship status—Law
35 enforcement agency restrictions) and 2019 c 440 s 6; and

1 (6) RCW 43.10.315 (Immigration enforcement model policies—
2 Adoption by law enforcement agencies) and 2019 c 440 s 7.

3 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act
4 constitute a new chapter in Title 43 RCW.

--- END ---