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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 106

01/17/2019 Authored by Lucero
The bill was read for the first time and referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to public safety; providing for the enforcement by certain state and local
1.3 governmental entities of state and federal laws governing immigration and providing
1.4 for certain duties of law enforcement and the courts; providing civil and criminal
1.5 penalties; proposing coding for new law in Minnesota Statutes, chapter 609.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. [609.93] IMMIGRATION; DEFINITIONS.

1.8 For the purposes of this section and sections 609.931 to 609.936, the following terms
1.9 have the meanings given them:

1.10 (1) "law enforcement agency" has the meaning given in section 237.82, subdivision 3,
1.11 clause (1);

1.12 (2) "local government" has the meaning given in section 403.21, subdivision 5; and

1.13 (3) "state criminal justice agency" means an agency of the state charged with detection,
1.14 enforcement, prosecution, adjudication, or incarceration with respect to the criminal or
1.15 traffic laws of this state. State criminal justice agency also includes a site identified and
1.16 licensed as a detention facility by the commissioner of corrections under section 241.021.

1.17 Sec. 2. [609.931] LIABILITY OF STATE OR LOCAL LAW ENFORCEMENT FOR
1.18 FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST.

1.19 (a) Except as provided in paragraph (d), a state criminal justice agency, law enforcement
1.20 agency, or local government that releases from custody a person who is the subject of an
1.21 immigration detainer request issued by United States Immigration and Customs Enforcement

2.1 is liable for damages resulting from a felony committed by the person in this state within
 2.2 ten years following the person's release if:

2.3 (1) the agency did not detain the person as requested;

2.4 (2) the person was not a citizen of the United States at the time of release; and

2.5 (3) the attorney general has petitioned the chief justice of the supreme court to convene
 2.6 a special three-judge district court panel under section 609.936, subdivision 5, to hear an
 2.7 action brought under that subdivision against the law enforcement agency or local
 2.8 government.

2.9 An immigration detainer request described under this paragraph is presumed to be valid,
 2.10 regardless of whether the detainer is written or verbal.

2.11 (b) This section does not create liability for damages that a person who is subject to an
 2.12 immigration detainer request sustains following the person's release by a law enforcement
 2.13 agency.

2.14 (c) Sovereign immunity of the state and governmental immunity of a local government
 2.15 to suit is waived and abolished to the extent of liability created by this section.

2.16 (d) A state criminal justice agency, law enforcement agency, or local government is not
 2.17 liable under paragraph (a) for damages incurred after United States Immigration and Customs
 2.18 Enforcement subsequently detains the person under that paragraph.

2.19 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to the release
 2.20 of a person from custody on or after that date.

2.21 **Sec. 3. [609.932] ENFORCEMENT OF FEDERAL IMMIGRATION LAW.**

2.22 (a) A peace officer may not stop a motor vehicle or conduct a search of a business or
 2.23 residence solely to enforce a federal law relating to aliens, immigrants, or immigration,
 2.24 including the federal Immigration and Nationality Act, United States Code, title 8, section
 2.25 1101 et seq., unless the officer is acting:

2.26 (1) at the request of, or providing assistance to, an appropriate federal law enforcement
 2.27 officer; or

2.28 (2) under the terms of an agreement between the law enforcement agency employing
 2.29 the officer and the federal government under which the agency receives delegated authority
 2.30 to enforce federal law relating to aliens, immigrants, or immigration.

3.1 (b) A peace officer may arrest an alien not lawfully present in the United States only if
3.2 the officer is acting under the authority granted under state or local law.

3.3 **Sec. 4. [609.933] DUTIES RELATED TO IMMIGRATION DETAINER REQUESTS.**

3.4 (a) A law enforcement agency that has custody of a person subject to an immigration
3.5 detainer request issued by United States Immigration and Customs Enforcement shall comply
3.6 with, honor, and fulfill any request made in the detainer request and in any other instrument
3.7 provided by the federal government.

3.8 (b) A law enforcement agency shall presume an immigration detainer request is based
3.9 on probable cause and is otherwise valid, regardless of whether the detainer request is written
3.10 or verbal.

3.11 (c) Notwithstanding paragraph (b), a law enforcement agency is not required to perform
3.12 a duty imposed by paragraph (a) with respect to a person who has provided proof that the
3.13 person is a citizen of the United States.

3.14 **Sec. 5. [609.934] COMPLETION OF SENTENCE IN FEDERAL CUSTODY.**

3.15 (a) This section applies only to a criminal case in which:

3.16 (1) a court sentences the defendant to a correctional facility; and

3.17 (2) the defendant is subject to an immigration detainer request.

3.18 (b) In a criminal case under paragraph (a), the court, at the time of sentencing the
3.19 defendant to imprisonment, shall issue an order requiring the correctional facility in which
3.20 the defendant is to be confined and all appropriate government officers, including at a
3.21 minimum a sheriff or warden, as appropriate, to require the defendant to serve in federal
3.22 custody the final portion of the defendant's sentence, not to exceed a period of seven days,
3.23 following the facility's or officer's determination that the change in the place of confinement
3.24 will facilitate the seamless transfer of the defendant into federal custody. In the absence of
3.25 an order issued under this section, a facility or officer acting under exigent circumstances
3.26 may perform the transfer after making the determination as provided by this paragraph.
3.27 This paragraph applies only if appropriate officers of the federal government consent to the
3.28 transfer of the defendant into federal custody under the circumstances described by this
3.29 section.

3.30 (c) If the applicable information described by paragraph (a), clause (2), is not available
3.31 at the time sentence is pronounced in the case, the court shall issue the order in paragraph

4.1 (b) as soon as the information becomes available. The sentencing court retains jurisdiction
4.2 for the purpose of issuing an order under this section.

4.3 (d) For the purposes of this section, "correctional facility" has the meaning given in
4.4 section 241.33, subdivision 3.

4.5 **Sec. 6. [609.935] PETITION.**

4.6 The attorney general may petition the chief justice of the supreme court to convene a
4.7 special three-judge district court panel in any suit filed in a district court in which state or
4.8 local government or a law enforcement agency is a defendant in a claim that involves an
4.9 alleged violation of section 609.936, subdivision 3.

4.10 **Sec. 7. [609.936] ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION**
4.11 **LAWS.**

4.12 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this subdivision
4.13 have the meanings given them.

4.14 (b) "Campus law enforcement or security office" means a law enforcement agency or
4.15 security office of an institution of higher education.

4.16 (c) "Immigration detainer request" means a request from the federal government to a
4.17 local entity, state criminal justice agency, or campus police department to maintain temporary
4.18 custody of an alien. The term includes verbal and written requests, including a United States
4.19 Department of Homeland Security Form I-247 document or a similar or successor form.

4.20 (d) "Immigration laws" means the laws of this state or federal law relating to aliens,
4.21 immigrants, or immigration, including the federal Immigration and Nationality Act, United
4.22 States Code, title 8, section 1101 et seq.

4.23 (e) "Institution of higher education" means:

4.24 (1) a public college or university under section 135A.51; or

4.25 (2) a private or independent educational institution under section 136A.28.

4.26 (f) "Lawful detention" means the detention of an individual by a law enforcement agency,
4.27 local government, or campus law enforcement or security office for the investigation of a
4.28 criminal offense. The term excludes a detention if the sole reason for the detention is that
4.29 the individual:

4.30 (1) is a victim of or witness to a criminal offense; or

5.1 (2) is reporting a criminal offense.

5.2 (g) "Local entity" means:

5.3 (1) the governing body of a local government, subject to subdivision 2;

5.4 (2) an officer or employee of or a division, department, or other body that is part of a
5.5 local government, including a local law enforcement agency, city attorney, or county attorney;
5.6 and

5.7 (3) a district attorney.

5.8 (h) "Policy" includes a formal, written rule, order, ordinance, or policy and an informal,
5.9 unwritten policy.

5.10 Subd. 2. **Applicability of section.** (a) This section does not apply to a school district or
5.11 charter school. This section does not apply to the release of information contained in
5.12 education records of an educational agency or institution, except in conformity with section
5.13 13.32 and the Family Educational Rights and Privacy Act of 1974, United States Code, title
5.14 20, section 1232g.

5.15 (b) Subject to paragraph (c), this section does not apply to a hospital to the extent that
5.16 the hospital is providing access to or delivering medical or health care services as required
5.17 under the following applicable federal or state laws:

5.18 (1) United States Code, title 42, section 1395dd;

5.19 (2) United States Code, title 42, section 1396b(v);

5.20 (3) chapter 256B; and

5.21 (4) chapter 144.

5.22 (c) Paragraph (b) does not exclude the application of this section to a peace officer
5.23 employed by or commissioned by a hospital otherwise subject to paragraph (b).

5.24 (d) This section does not apply to local or county public health offices.

5.25 (e) This section does not apply to a peace officer employed or contracted by a religious
5.26 organization during the officer's employment with the organization or while the officer is
5.27 performing the contract.

5.28 Subd. 3. **Policies and actions regarding immigration enforcement.** (a) A state criminal
5.29 justice agency, local entity, or campus law enforcement or security office shall not:

5.30 (1) adopt, enforce, or endorse a policy under which the entity, agency, or office prohibits
5.31 or discourages the enforcement of immigration laws;

6.1 (2) by consistent actions prohibit or discourage the enforcement of immigration laws;

6.2 or

6.3 (3) by consistent actions, intentionally violate section 631.50.

6.4 (b) In compliance with paragraph (a), a state criminal justice agency, local entity, or
 6.5 campus law enforcement or security office shall not prohibit or discourage a person who is
 6.6 a peace officer, a corrections officer, or a district attorney or other prosecuting attorney and
 6.7 who is employed by or otherwise under the direction or control of the state criminal justice
 6.8 agency, local entity, or campus law enforcement or security office from doing any of the
 6.9 following:

6.10 (1) inquiring into the immigration status of a person under lawful detention or under
 6.11 arrest;

6.12 (2) with respect to information relating to the immigration status, lawful or unlawful,
 6.13 of any person under lawful detention or under arrest, including information regarding the
 6.14 person's place of birth:

6.15 (i) sending the information to or requesting or receiving the information from United
 6.16 States Citizenship and Immigration Services, United States Immigration and Customs
 6.17 Enforcement, or another relevant federal agency;

6.18 (ii) maintaining the information; or

6.19 (iii) exchanging the information with another state or local entity or campus law
 6.20 enforcement or security office;

6.21 (3) assisting or cooperating with a federal immigration officer as reasonable or necessary,
 6.22 including providing enforcement assistance; or

6.23 (4) permitting a federal immigration officer to enter and conduct enforcement activities
 6.24 at a jail to enforce federal immigration laws.

6.25 Subd. 4. **Discrimination prohibited.** A local entity, state criminal justice agency, campus
 6.26 law enforcement or security office, or person employed by or otherwise under the direction
 6.27 or control of the entity, agency, or office may not consider race, color, religion, language,
 6.28 or national origin while enforcing immigration laws, except to the extent permitted by the
 6.29 United States Constitution or the Minnesota Constitution.

6.30 Subd. 5. **Complaint; equitable relief.** (a) Any person, including the federal government,
 6.31 may file a complaint with the attorney general if the person offers evidence to support an
 6.32 allegation that a local entity, state criminal justice agency, or campus law enforcement or

7.1 security office is violating subdivision 3. The person shall include with the complaint the
7.2 evidence the person has that supports the complaint.

7.3 (b) A state criminal justice agency, local entity, or campus law enforcement or security
7.4 office for which the attorney general has received a complaint under paragraph (a) shall
7.5 comply with a document request, including a request for supporting documents, from the
7.6 attorney general related to the complaint.

7.7 (c) If the attorney general determines that a complaint filed under paragraph (a) against
7.8 a state criminal justice agency, local entity, or campus law enforcement or security office
7.9 is valid, the attorney general shall, not later than ten days after the date of the determination,
7.10 provide written notification to the entity, agency, or office that:

7.11 (1) the complaint has been filed;

7.12 (2) the attorney general has determined that the complaint is valid;

7.13 (3) the attorney general is authorized to file an action to enjoin the violation if the state
7.14 criminal justice agency, local entity, or campus law enforcement or security office does not
7.15 come into compliance with the requirements of subdivision 3 on or before 90 days after the
7.16 date the notification is provided; and

7.17 (4) the state criminal justice agency, local entity, or campus law enforcement or security
7.18 office will be denied state grant funds for the state fiscal year following the year in which
7.19 a final judicial determination in an action brought under paragraph (e) is made.

7.20 (d) Not later than 30 days after the date a state criminal justice agency, local entity, or
7.21 campus law enforcement or security office receives written notification under paragraph
7.22 (c), the state criminal justice agency, local entity, or campus law enforcement or security
7.23 office shall provide the attorney general with a copy of:

7.24 (1) the entity's, agency's, or office's written policies related to immigration enforcement
7.25 actions;

7.26 (2) each immigration detainer request received by the entity, agency, or office from the
7.27 United States Department of Homeland Security; and

7.28 (3) each response sent by the entity, agency, or office for a detainer request under clause
7.29 (2).

7.30 (e) If the attorney general determines that a complaint filed under paragraph (a) is valid,
7.31 the attorney general may petition the chief justice of the supreme court to convene the special
7.32 three-judge district court panel under section 609.935 to hear a petition for a writ of

8.1 mandamus or other appropriate equitable relief to compel the state criminal justice agency,
8.2 local entity, or campus law enforcement or security office that is violating subdivision 3 to
8.3 comply with that section. The court shall be convened in Ramsey County or the county in
8.4 which the principal office of the state criminal justice agency, local entity, or campus law
8.5 enforcement or security office is located. The attorney general may recover reasonable
8.6 expenses incurred in obtaining relief under this paragraph, including court costs, reasonable
8.7 attorney fees, investigative costs, witness fees, and deposition costs.

8.8 (f) An appeal of the three-judge district court panel order or judgment under paragraph
8.9 (e) may be made to the court of appeals within 20 days of the date of filing of the order or
8.10 entry of the judgment. The appellate court shall make its final order or judgment with the
8.11 least possible delay.

8.12 Subd. 6. **Civil penalty.** (a) A state criminal justice agency, local entity, or campus law
8.13 enforcement or security office that violates subdivision 3 is subject to a civil penalty in an
8.14 amount:

8.15 (1) not less than \$1,000 and not more than \$1,500 for the first violation; and

8.16 (2) not less than \$25,000 and not more than \$25,500 for each subsequent violation.

8.17 (b) Each day of a continuing violation of subdivision 3 constitutes a separate violation
8.18 for the civil penalty under this subdivision.

8.19 (c) The three-judge district court panel that hears an action brought under subdivision
8.20 5 against the state criminal justice agency, local entity, or campus law enforcement or
8.21 security office shall determine the amount of the civil penalty under this subdivision.

8.22 (d) A civil penalty collected under this section shall be deposited in the crime victims
8.23 account under section 611A.612.

8.24 (e) Governmental immunity to a lawsuit is waived and abolished to the extent of liability
8.25 created by this section.

8.26 Subd. 7. **Criminal offense.** (a) An elected official of a local entity or an individual who
8.27 is appointed by the governing body of a local entity who intentionally or knowingly violates
8.28 subdivision 3 commits an offense.

8.29 (b) An offense under this subdivision is a misdemeanor.

8.30 Subd. 8. **Denial of state grant funds; database.** (a) A state criminal justice agency,
8.31 local entity, or campus law enforcement or security office may not receive state grant funds

9.1 if the local entity, state criminal justice agency, or campus law enforcement or security
9.2 office violates subdivision 3.

9.3 (b) Except as provided by paragraph (c), state grant funds for a local entity, state criminal
9.4 justice agency, or campus law enforcement or security office shall be denied beginning with
9.5 the state fiscal year following the year in which a final judicial determination in an action
9.6 brought under subdivision 6 is made that the entity, agency, or office has intentionally
9.7 violated subdivision 3. State grant funds shall continue to be denied until reinstated under
9.8 subdivision 9.

9.9 (c) State grant funds for the provision of wearable body protective gear used for law
9.10 enforcement purposes may not be denied under this section.

9.11 (d) The commissioner of management and budget shall adopt rules under chapter 14 to
9.12 implement this section uniformly among the state agencies from which state grant funds
9.13 are distributed to local entities, state criminal justice agencies, and campus law enforcement
9.14 or security offices.

9.15 (e) The attorney general shall develop and maintain a database listing each local entity,
9.16 state criminal justice agency, and campus law enforcement or security office for which a
9.17 final judicial determination has been made under paragraph (b). The attorney general shall
9.18 post the database on the attorney general's website.

9.19 Subd. 9. Reinstatement of state grant funds. (a) Except as provided by paragraph (b),
9.20 no earlier than one year from the date of a final judicial determination that a local entity,
9.21 state criminal justice agency, or campus law enforcement or security office has intentionally
9.22 violated subdivision 3, the entity, agency, or office may petition the chief justice of the
9.23 supreme court to convene the special three-judge district court panel under section 609.935
9.24 to hear an action against the attorney general seeking a declaratory judgment regarding the
9.25 entity's or agency's compliance with subdivision 3.

9.26 (b) A local entity, state criminal justice agency, or campus law enforcement or security
9.27 office may petition for the reinstatement of state grant funds under paragraph (a) before the
9.28 date established under that paragraph if the person who was the chief executive of the entity,
9.29 agency, or office at the time of the violation of subdivision 3 is removed from office.

9.30 (c) A local entity, state criminal justice agency, or campus law enforcement or security
9.31 office that brings an action under paragraph (a) shall comply with a document request,
9.32 including a request from the attorney general for supporting documents related to the action.

10.1 (d) If the court grants a declaratory judgment declaring that the local entity, state criminal
 10.2 justice agency, or campus law enforcement or security office is in compliance with
 10.3 subdivision 3, state grant funds for the entity, agency, or office shall be reinstated beginning
 10.4 with the first day of the month following the month in which the declaratory judgment was
 10.5 granted.

10.6 (e) A local entity, state criminal justice agency, or campus law enforcement or security
 10.7 office may not bring an action under paragraph (a) more than twice in one 12-month period.

10.8 (f) A party is not entitled to recover any attorney fees in an action under paragraph (a).

10.9 Subd. 10. **Community outreach policy.** (a) Each law enforcement agency that is subject
 10.10 to the requirements of this section may adopt a written policy requiring the agency to perform
 10.11 community outreach activities to educate the public that a person employed by or otherwise
 10.12 under the direction or control of the agency may not inquire into the immigration status of
 10.13 a detained person if the detention occurred solely because the person:

10.14 (1) is a victim of or witness to a criminal offense; or

10.15 (2) is reporting a criminal offense.

10.16 (b) A policy adopted under this subdivision must include outreach to victims of:

10.17 (1) family violence, as defined under section 256J.08, subdivision 34a, including victims
 10.18 receiving domestic abuse counseling or education under section 518B.02; and

10.19 (2) sexual assault, as defined under section 145.4711, subdivision 5, including victims
 10.20 receiving services to victims of sexual assault under section 611A.211.

10.21 **Sec. 8. LEGISLATIVE INTENT.**

10.22 It is the intent of the legislature that every provision of this act and every application of
 10.23 the provisions in this act to each person or entity are severable from each other. If any
 10.24 application of any provision in this act to any person, group of persons, or circumstances
 10.25 is found by a court to be invalid for any reason, the remaining applications of that provision
 10.26 to all other persons and circumstances shall be severed and may not be affected.

10.27 **Sec. 9. WRITTEN POLICY.**

10.28 No later than January 1, 2020, each law enforcement agency subject to this act shall:

10.29 (1) formalize in writing any unwritten, informal policies relating to the enforcement of
 10.30 immigration laws; and

- 11.1 (2) update the agency's policies to be consistent with this act and to include:
- 11.2 (i) provisions prohibiting an agency officer or employee from preventing agency
- 11.3 personnel from taking immigration enforcement actions under Minnesota Statutes, section
- 11.4 609.936, subdivision 3; and
- 11.5 (ii) provisions requiring each agency officer or employee to comply with Minnesota
- 11.6 Statutes, sections 609.932 and 609.933, if applicable.
- 11.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.