GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

HOUSE BILL 318
RATIFIED BILL

AN ACT TO MODIFY ELIGIBILITY FOR RELEASE AND REQUIRE NOTIFICATION OF RELEASE TO IMMIGRATION AND CUSTOMS ENFORCEMENT WHEN A PRISONER IS SUBJECT TO AN IMMIGRATION DETAINER AND ADMINISTRATIVE WARRANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162-62 reads as rewritten:

"**§ 162-62. Legal status of prisoners.**

(a) When any person is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident or citizen of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both, if the person is charged with any of the following offenses:

(1) ~~A felony under G.S. 90-95.~~Any felony.

~~(2) A felony under Article 6, Article 7B, Article 10, Article 10A, or Article 13A of Chapter 14 of the General Statutes.~~

~~(3)~~(2) A Class A1 misdemeanor ~~or felony~~ under Article 6A, Article 7B, or Article 8 of Chapter 14 of the General Statutes.

~~(4)~~(3) Any violation of G.S. 50B-4.1.

(4) Any offense involving impaired driving as defined in G.S. 20-4.01.

(b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the prisoner shall make a query of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the query from the facility.

(b1) When any person charged with a criminal offense is confined for any period in a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit, and the administrator or other person in charge of the facility has been notified that Immigration and Customs Enforcement of the United States Department of Homeland Security has issued a detainer and administrative warrant that reasonably appears to be for the person in custody, the following shall apply:

(1) Prior to the prisoner's release, and after receipt of the detainer and administrative warrant, or a copy thereof, by the administrator or other person in charge of the facility, the prisoner shall be taken without unnecessary delay before a State judicial official who shall be provided with the detainer and administrative warrant, or a copy thereof.

(2) ~~The~~ If the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant, the judicial official shall issue an order directing the prisoner be held in custody ~~if the prisoner~~

~~appearing before the judicial official is the same person subject to the detainer and administrative warrant.~~and transferred to the custody of an officer of Immigration and Customs Enforcement of the United States Department of Homeland Security upon that officer's appearance at the facility and request for custody.

(3) Unless continued custody of the prisoner is required by other legal process, a prisoner held pursuant to an order issued under this subsection shall be released upon the first of the following conditions:

a. The passage of 48 hours from ~~receipt of the detainer and administrative warrant.~~the time the prisoner would otherwise be released from the facility.

b. Immigration and Customs Enforcement of the United States Department of Homeland Security takes custody of the prisoner.

c. The detainer is rescinded by Immigration and Customs Enforcement of the United States Department of Homeland Security.

(4) For any prisoner held pursuant to an order issued under this subsection, no later than two hours after the time when the prisoner would otherwise be released from the facility, the administrator or other person in charge of the facility shall notify Immigration and Customs Enforcement of the United States Department of Homeland Security of the date and time that the prisoner will be released pursuant to sub-subdivision a. of subdivision (3) of this subsection. The notification shall be made in the manner indicated on the Department of Homeland Security Immigration Detainer – Notice of Action form.

(b2) No State or local law enforcement officer or agency shall have criminal or civil liability for action taken pursuant to an order issued under subsection (b1) of this section.

(c) Except as provided in subsection (b1) of this section, nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.

…."

SECTION 2. G.S. 15A-534 is amended by adding a new subsection to read:

"(d4) When conditions of pretrial release are being determined for a defendant charged with any felony, a Class A1 misdemeanor under Article 6A, Article 7B, or Article 8 of Chapter 14 of the General Statutes, any violation of G.S. 50B-4.1, or any offense involving impaired driving as defined in G.S. 20-4.01, the judicial official shall attempt to determine if the defendant is a legal resident or citizen of the United States by an inquiry of the defendant, or by examination of any relevant documents, or both. If the judicial official is unable to determine if the defendant is a legal resident or citizen of the United States, the judicial official shall set conditions of pretrial release pursuant to this Article and shall commit the defendant to an appropriate detention facility pursuant to G.S. 15A-521 to be fingerprinted, for a query of Immigration and Customs Enforcement of the United States Department of Homeland Security, and to be held for a period of two hours from the query of Immigration and Customs Enforcement of the United States Department of Homeland Security.

If by the end of this two-hour period no detainer and administrative warrant have been issued by Immigration and Customs Enforcement of the United States Department of Homeland Security, the defendant shall be released pursuant to the terms and conditions of the release order. If before the end of this two-hour period a detainer and administrative warrant issued by Immigration and Customs Enforcement of the United States Department of Homeland Security have been received by the facility, the defendant shall be processed pursuant to G.S. 162-62(b1)."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect

without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 4. Section 1 of this act becomes effective October 1, 2025, and applies to any person confined in or released from a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit on or after that date. Section 2 of this act becomes effective October 1, 2025, and applies to persons appearing before a judicial official for a determination of pretrial release conditions on or after that date. The remainder of this act becomes effective October 1, 2025.

In the General Assembly read three times and ratified this the 10th day of June, 2025.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Destin Hall
Speaker of the House of Representatives

_____
Josh Stein
Governor

Approved _____.m. this _____ day of _____, 2025