

## About the Georgia Criminal Alien Track and Report Act of 2024.

Imposes stricter requirements on local law enforcement regarding the identification and reporting of undocumented immigrants. This Bill was signed into Georgia law and is currently in effect, but state agencies and community members can utilize the information below to properly understand and develop a practice in compliance with the law. The key provisions of HB 1105 include:

1. **Immigration Status Verification for “Citation-Only Misdemeanors”:** For the following list of misdemeanors, police officers with arrest power can consider the release of a suspect with a citation only (instead of arrest) *only after* verification of the individual’s immigration status via federal databases or the individuals’ presentation of valid identification proving legal presence in the U.S. If legal presence cannot be verified, the person will be arrested, instead of released on a citation to return to court.
  - a. The list of misdemeanors is:
    - i. Criminal Trespass, Shoplifting (\$500 or more)
    - ii. Refund Fraud (\$500 or more), and
    - iii. Possession of Marijuana < 1 ounce
2. **Jailer/Sheriff’s Mandatory Compliance with ICE Detainers:** Jailers / Sheriffs across Georgia are now required by law to honor any written request from ICE to detain a person who is suspected to be in the U.S. unlawfully. This detainer request should only be honored for 48 business hours after the person was ordered “released” on the local arrest charge(s). If ICE does not detain the person after 48 business hours (from the time he/she would have otherwise been released), the person shall be released.
3. **Jailer Verification of Detainee’s Documents Prior to ICE Notification:** *HB 1105 actually provides more autonomy to jailers to verify a detainee’s proof of “lawful status” before any notification to ICE is necessary. See chart above below for details.*
4. **Quarterly Reports:** The bill mandates that jailers post quarterly reports on their websites detailing the number of inmates, ICE detainers, and responses from ICE starting December 31, 2024. This will not include individuals’ personal information or countries of origin.
5. **DNA Collection:** It requires the collection of DNA from convicted felons who are subject to an immigration detainer.
6. **Non-Release Without ICE Notification:** The bill discourages the State Board of Pardons and Paroles from releasing undocumented immigrants before their sentences are completed unless ICE confirms that a Deportation Order is in place before release.
7. **Non-Compliance Penalties:** Local governments and law enforcement agencies that do not comply with these requirements face penalties, including misdemeanor charges against local officials and the potential loss of state and federal funding.



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This advisory was written in collaboration with Attorney Jessica Stern of CrImmigration Experts,LLC

**Definition of “Lawful Presence”:** *A person can establish “lawful presence” in many instances where they otherwise cannot establish “legal immigration status.” “Lawful presence” means that the U.S. Department of Homeland Security (DHS) has permitted the person to be present in the U.S. for a given time-period, even though they may not (yet) have formal legal status in the U.S.*

- *Formal legal status only includes a valid & current visa; approved asylum status; lawful permanent residency (“green card”/Form I-551); and U.S. citizenship.*
- *“Lawful presence” is granted to noncitizens who do not have formal legal status when they are in the formal immigration process of some kind, and DHS has accepted them for processing. They are allowed to remain in the U.S. for a specific period of time, and this permission is confirmed through an Employment Authorization Document (“EAD”/ Form I-766). The vast majority of people with an EAD are eligible for a Driver’s License, an approved document under HB 1105 or The Georgia Criminal Alien Track and Report Act of 2024.*



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## For Community Members, Localities and Law Enforcement

ICE notification practice prior to 7/1/24	ICE notification practice after 7/1/2024
Jailers notified ICE of every detainee who reports they were born in a foreign country.	Jailers should ONLY notify ICE / verify for detainer requests when the individual cannot establish “lawful presence.”
Detainees were not officially permitted to present valid documentation of their lawful presence in the U.S., in order to prevent notification and involvement of ICE	<p>Detainees must present one of the following documents that prove lawful presence in Georgia:</p> <ul style="list-style-type: none"> <li>○ Georgia issued Driver License and most state Driver Licenses</li> <li>○ An I-94 entry record (showing you have not overstayed your visa)</li> <li>○ Permanent Residence Card</li> <li>○ Valid Nexus card</li> <li>○ Global Entry card</li> <li>○ Valid US Passport</li> <li>○ Employee Authorization Document (EAD) is not a permitted document under HB1105 but those with an EAD should be able to get a valid drivers license, including:               <ul style="list-style-type: none"> <li>■ Respondents in removal/ deportation proceedings with a pending relief application</li> <li>■ Pending Asylum Applicants/ Parolees</li> <li>■ Pending Lawful Permanent residency/green card applicants</li> <li>■ TPS &amp; DACA recipients</li> <li>■ Other approved DHS program recipients</li> </ul> </li> </ul>
Silent as to recognition of civil rights or federal law preemption.	<p>Specific note that implementation of HB1105 will uphold the civil rights of people.</p> <p>Specific note that HB1105 can be implemented to the extent allowed by the Federal government.</p>

No specific language on duration of time that people can be detained awaiting ICE.	Detainees cannot be held longer than 48 business hours.
<p>A sample of deoxyribonucleic acid (DNA) shall be collected by oral swab or other noninvasive procedure from any individual:</p> <ul style="list-style-type: none"> <li>• Who has been convicted of a felony and is currently incarcerated in a detention facility, serving a probation sentence, or serving under the jurisdiction of the State Board of Pardons and Paroles for such felony; or</li> <li>• Who has been charged with a felony, and sentence for such offense has been imposed pursuant to Article 3 of Chapter 8 of Title 42 or pursuant to subsection (a) or (c) of Code Section 16-13-2.</li> </ul>	Same for individuals who have been convicted of a felony AND have an ICE hold (note that three misdemeanors within five years equals a felony in the state of Georgia).

### For Sheriff Offices, Law Enforcement and Jailers

Before 7/1/2024	After 7/1/2024
Local governments <b>could opt into the 287(g) program</b> , which deputizes local sheriff deputies as ICE officials, in order to more timely identify and detain individuals suspected to be in the U.S. unlawfully. ICE has two 287(g) models: the Jail Enforcement Model and the Warrant Service Officer program.	Local and state authorities are now <b>mandated to request</b> agreements with federal agencies that enforce immigration laws. *HB1105 states that request is mandatory, but does not seem to require participation beyond initial request.
Facilities that house ICE detainees must follow a set of standards that outline their immigration detention responsibilities, detainee services, and how to keep the detention environment safe and secure.	No change or additional information
287(g) Program: This program allows state and local law enforcement agencies to enter into agreements with ICE, providing designated officers the authority to perform immigration enforcement duties under ICE supervision under various models	Same. This is a Federal Program

<p>Detention Facilities: Georgia hosts several ICE detention centers, where individuals detained for immigration violations are held. Facilities such as the Stewart Detention Center and the Irwin County Detention Center are used by ICE to house detainees pending deportation proceedings or removal from the country.</p>	<p>No change</p>
<p>Dept. of Corrections must publish an online report sharing the total number of inmates in DoC custody who are not US citizens and are subject to an ICE detainer. The report will share aggregate data indicating inmates’.</p>	<p>No change, clarifying the report shall be published every 90 days beginning October 1, 2024</p>
<p>No jailer custody chain of command and responsibilities</p>	<p>Custodial authority is as follows:</p> <ul style="list-style-type: none"> <li>• The commissioner if a person is in physical custody at a penal institution</li> <li>• The sheriff if a person is in physical custody at a county jail</li> <li>• The warden if a person is in physical custody at county correctional institution</li> <li>• The chief of police if a person is in physical custody at a municipal detention facility</li> </ul>
<p>Authority to transport immigrants without legal status to a federal facility.</p>	<p>HB1105 allows for transport only when authorized by immigration detainer or federal arrest warrant.</p>
<p>No mention of consequences for failure to comply with ICE notification, detainers, or status verification.</p>	<p>The law will allow for withholding of state or state administered funding if law enforcement offices do not comply with this law. However, no county commission shall be subject to the withholding of state or federal funding when a sheriff or his or her employee violates this law.</p> <p>First violation of this code section by a local official or employee is a misdemeanor. Anything after is a misdemeanor of a high and aggravated nature.</p>



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