

117TH CONGRESS  
1ST SESSION

# S. 60

To provide for the effective use of immigration detainers to enhance public safety.

---

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2021

Mr. TILLIS (for himself, Mr. GRASSLEY, Ms. ERNST, Mr. INHOFE, Mr. ROUNDS, Mr. MORAN, Mr. HAWLEY, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To provide for the effective use of immigration detainers to enhance public safety.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Immigration Detainer Enforcement Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Sense of Congress.

Sec. 3. Purpose.

Sec. 4. Immigration detainer authorities of the Department of Homeland Security.

Sec. 5. Effective coordination with State, tribal, and local law enforcement agencies.

Sec. 6. Compensating States for detaining criminal aliens.

Sec. 7. Priority for distributing Federal funding and property to State and local law enforcement.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) the removal of criminal aliens promotes  
4 public safety, national security, border security, and  
5 the integrity of the immigration system;

6 (2) detainers have proven to be a useful law en-  
7 forcement tool that serve to expedite and improve  
8 the efficiency of the removal process by enabling the  
9 Department of Homeland Security to assume cus-  
10 tody in a timely manner of aliens in the custody of  
11 Federal, State, tribal, or local law enforcement agen-  
12 cies; and

13 (3) several States and localities have limited  
14 their cooperation with immigration detainers issued  
15 by the Department of Homeland Security and lim-  
16 ited the Department of Homeland Security's access  
17 to information regarding the release of criminal  
18 aliens in their custody, which has resulted in the re-  
19 lease of dangerous criminal aliens into local commu-  
20 nities.

21 **SEC. 3. PURPOSE.**

22 The purposes of this Act are—

1           (1) to limit recidivist criminal activity through  
2 the removal of criminal aliens released from Federal,  
3 State, tribal, or local custody;

4           (2) to facilitate cooperation between Federal,  
5 State, tribal, and local law enforcement agencies  
6 with regard to immigration enforcement and infor-  
7 mation sharing; and

8           (3) to limit the burden on Federal, State, tribal,  
9 and local law enforcement agencies that cooperate  
10 with the Department of Homeland Security in its  
11 prioritized immigration enforcement.

12 **SEC. 4. IMMIGRATION DETAINER AUTHORITIES OF THE DE-**  
13 **PARTMENT OF HOMELAND SECURITY.**

14           Section 287 of the Immigration and Nationality Act  
15 (8 U.S.C. 1357) is amended—

16           (1) in subsection (a)—

17                   (A) in the matter preceding paragraph (1),  
18                   by striking “the Service authorized under regu-  
19                   lations prescribed by the Attorney General” and  
20                   inserting “the Department of Homeland Secu-  
21                   rity authorized under regulations prescribed by  
22                   the Secretary of Homeland Security”;

23                   (B) by inserting “or her” after “his” each  
24                   place such term appears;

1 (C) in paragraph (2), by striking “and is  
2 likely to escape before a warrant can be ob-  
3 tained for his arrest”; and

4 (D) in the undesignated matter following  
5 paragraph (5)—

6 (i) by striking “Attorney General”  
7 each place such term appears and inserting  
8 “Secretary of Homeland Security”; and

9 (ii) by striking “Service” each place  
10 such term appears and inserting “Depart-  
11 ment of Homeland Security”; and

12 (2) by amending subsection (d) to read as fol-  
13 lows:

14 “(d) DETAINER OF CRIMINAL ALIENS.—

15 “(1) IN GENERAL.—If an individual is arrested  
16 by a Federal, State, tribal, or local law enforcement  
17 official for a violation of any criminal law, the Sec-  
18 retary of Homeland Security (or his or her designee)  
19 may issue a detainer to the arresting agency if there  
20 is reason to believe the individual is an alien who  
21 may be removable from the United States. Notwith-  
22 standing any other provision of law, no court shall  
23 have jurisdiction to review the discretionary decision  
24 or action by the Secretary of Homeland Security (or

1 his or her designee) to issue a detainer under this  
2 paragraph.

3 “(2) TRANSFER OF CUSTODY.—Upon the  
4 issuance of a detainer by the Secretary of Homeland  
5 Security (or his or her designee) with respect to an  
6 alien described in paragraph (1), the arresting Fed-  
7 eral, State, tribal, or local law enforcement agency  
8 is authorized to maintain custody of the alien for a  
9 period not to exceed 48 hours in order to transfer  
10 custody of the alien to the Department of Homeland  
11 Security.

12 “(3) INDEMNIFICATION.—

13 “(A) IN GENERAL.—Under such regula-  
14 tions as the Secretary of Homeland Security  
15 shall prescribe, the Secretary (or his or her des-  
16 ignee) may enter into agreements with State,  
17 tribal, and local law enforcement agencies to in-  
18 demnify such agencies against claims (including  
19 reasonable expenses of litigation or settlement)  
20 by third parties for wrongful detention resulting  
21 from detainers issued without reason to believe  
22 that the individual is an alien who may be re-  
23 movable from the United States.

24 “(B) LIMITATION.—Indemnification under  
25 subparagraph (A) does not extend to claims re-

1           lating to the negligence or willful misconduct of  
2           a Federal, State, tribal, or local law enforce-  
3           ment agency or the conditions of detention in  
4           the facility used by such agency to detain the  
5           individual subject to the detainer.

6           “(C) ADDITIONAL CONDITIONS.—Each in-  
7           demnification agreement entered into pursuant  
8           to subparagraph (A) shall—

9                   “(i) require the State, tribal, or local  
10                   law enforcement agency to notify the  
11                   United States Government of any suit or  
12                   claim against such agency for wrongful de-  
13                   tention;

14                   “(ii) authorize the United States Gov-  
15                   ernment, at its elections, to control or as-  
16                   sist in the defense of such suit or claim;  
17                   and

18                   “(iii) limit the amount of indemnifica-  
19                   tion to a sum certified by the Secretary (or  
20                   his or her designee) that is just and rea-  
21                   sonable.”.

1 **SEC. 5. EFFECTIVE COORDINATION WITH STATE, TRIBAL,**  
2 **AND LOCAL LAW ENFORCEMENT AGENCIES.**

3 (a) IN GENERAL.—Section 642 of the Illegal Immi-  
4 gration Reform and Immigrant Responsibility Act of 1996  
5 (8 U.S.C. 1373) is amended to read as follows:

6 **“SEC. 642. COMMUNICATION AND COOPERATION BETWEEN**  
7 **GOVERNMENT AGENCIES AND THE DEPART-**  
8 **MENT OF HOMELAND SECURITY.**

9 “(a) IN GENERAL.—Notwithstanding any other pro-  
10 vision of Federal, State, tribal, or local law, a Federal,  
11 State, tribal, or local government entity or official may  
12 not prohibit, or restrict in any way, any government entity  
13 or official from sending to, or receiving from, the Depart-  
14 ment of Homeland Security information regarding the citi-  
15 zenship or immigration status (lawful or unlawful) of any  
16 individual.

17 “(b) ADDITIONAL AUTHORITY OF GOVERNMENT EN-  
18 TITIES.—Notwithstanding any other provision of Federal,  
19 State, tribal, or local law, no person or agency may pro-  
20 hibit, or restrict in any way, a Federal, State, tribal, or  
21 local government entity from—

22 “(1) sending information regarding the citizen-  
23 ship or immigration status (lawful or unlawful) of  
24 any individual to, or requesting or receiving such in-  
25 formation from, the Department of Homeland Secu-  
26 rity;

1           “(2) exchanging citizenship or immigration sta-  
2           tus information described in paragraph (1) with any  
3           other Federal, State, tribal, or local government en-  
4           tity;

5           “(3) providing the Department of Homeland  
6           Security with access to information in Federal,  
7           State, tribal, or local government databases regard-  
8           ing individuals with respect to whom a detainer has  
9           been issued, including when such individuals will be  
10          released from criminal custody; or

11          “(4) maintaining custody of an individual pur-  
12          suant to section 287(d)(2) of the Immigration and  
13          Nationality Act (8 U.S.C. 1357(d)(2)).

14          “(c) OBLIGATION TO RESPOND TO INQUIRIES.—The  
15          Secretary of Homeland Security shall respond to an in-  
16          quiry by a Federal, State, tribal, or local government  
17          agency that seeks to verify or ascertain the citizenship or  
18          immigration status of any individual within the jurisdic-  
19          tion of the agency for any purpose authorized by law, by  
20          providing the requested verification or status informa-  
21          tion.”.

22          (b) CLERICAL AMENDMENT.—The table of contents  
23          for the Illegal Immigration Reform and Immigrant Re-  
24          sponsibility Act of 1996 (division C of Public Law 104—



1 208; 8 U.S.C. 1101 note) is amended by amending the  
 2 item relating to 642 to read as follows:

“Sec. 642. Communication and cooperation between government agencies and  
 the Department of Homeland Security.”.

3 **SEC. 6. COMPENSATING STATES FOR DETAINING CRIMINAL**  
 4 **ALIENS.**

5 Section 241(i) of the Immigration and Nationality  
 6 Act (8 U.S.C. 1231(i)) is amended to read as follows:

7 “(i) INCARCERATION OR DETENTION.—

8 “(1) DEFINED TERM.—In this subsection, the  
 9 term ‘undocumented criminal alien’ means an alien  
 10 who—

11 “(A) has been convicted of a felony or of  
 12 two or more misdemeanors; and

13 “(B)(i) entered the United States without  
 14 inspection or at any time or place other than as  
 15 designated by the Secretary of Homeland Secu-  
 16 rity;

17 “(ii) was the subject of exclusion, deporta-  
 18 tion, or removal proceedings at the time the  
 19 alien was taken into custody by the State or a  
 20 political subdivision of the State; or

21 “(iii)(I) was admitted as a nonimmigrant;  
 22 and

1           “(II) at the time the alien was taken into  
2 custody by the State or a political subdivision  
3 of the State—

4                   “(aa) failed to maintain the non-  
5 immigrant status in which the alien was  
6 admitted or to which it was changed under  
7 section 248; or

8                   “(bb) failed to comply with the condi-  
9 tions of any such status.

10           “(2) IN GENERAL.—If the governor of a State  
11 (or, if appropriate, the chief executive officer of a  
12 political subdivision of the State), exercising author-  
13 ity with respect to the incarceration or detention of  
14 an undocumented criminal alien, submits a written  
15 request to the Attorney General, the Attorney Gen-  
16 eral may—

17                   “(A) enter into a contractual arrangement  
18 providing for compensation to the State or a  
19 political subdivision of the State, as may be ap-  
20 propriate, with respect to the incarceration or  
21 detention of the undocumented criminal alien;  
22 or

23                   “(B) take the undocumented criminal alien  
24 into the custody of the Federal Government and  
25 incarcerate or detain the alien.

1           “(3) DETENTION SECURITY.—In carrying out  
2 paragraph (2), the Attorney General shall—

3           “(A) give priority to the Federal incarcer-  
4 ation of undocumented criminal aliens who have  
5 committed aggravated felonies; and

6           “(B) ensure that undocumented criminal  
7 aliens incarcerated or detained in Federal facili-  
8 ties pursuant to this subsection are held in fa-  
9 cilities that provide a level of security appro-  
10 priate to the crimes for which they were  
11 charged or convicted.

12           “(4) AMOUNT OF COMPENSATION.—

13           “(A) IN GENERAL.—Compensation pro-  
14 vided for each day an undocumented criminal  
15 alien is detained by a State or a political sub-  
16 division of a State pursuant to a contract under  
17 paragraph (2)(A) shall be equal to the average  
18 daily cost of incarceration or detention of a  
19 prisoner in the relevant State, as determined by  
20 the Attorney General.

21           “(B) CERTIFICATION REQUIREMENT.—

22           “(i) IN GENERAL.—The Secretary of  
23 Homeland Security shall—

1           “(I) promulgate regulations es-  
2           tablishing detainer compliance cri-  
3           teria; and

4           “(II) periodically submit a certifi-  
5           cation to the Attorney General that  
6           identifies which States and political  
7           subdivisions of a State have not com-  
8           plied with detainer requests received  
9           from the Department of Homeland  
10          Security.

11          “(ii) FUNDING LIMITATION.—Funds  
12          may only be provided to States and polit-  
13          ical subdivisions of States under this sub-  
14          section that—

15               “(I) are not identified in a cer-  
16               tification described in clause (i)(II);  
17               and

18               “(II) are cooperating with the  
19               Secretary with respect to each de-  
20               tainer lodged against an individual in  
21               the custody of the State or political  
22               subdivision of the State in accordance  
23               with section 287(d) and the regula-  
24               tions promulgated pursuant to clause  
25               (i)(I).

1           “(C) EFFECT OF NONCOMPLIANCE.—Any  
2 State or political subdivision of a State that  
3 fails to substantially comply with detainers  
4 issued by the Department of Homeland Security  
5 shall be ineligible for any funding under  
6 this subsection during the fiscal year in which  
7 such failure occurs.

8           “(5) AUTHORIZATION OF APPROPRIATIONS.—

9           “(A) IN GENERAL.—There are authorized  
10 to be appropriated to carry out this sub-  
11 section—

12                   “(i) \$750,000,000 for fiscal year  
13 2021;

14                   “(ii) \$850,000,000 for fiscal year  
15 2022; and

16                   “(iii) \$950,000,000 for each of the  
17 fiscal years 2023 through 2027.

18           “(B) LIMITATION.—Amounts appropriated  
19 pursuant to subparagraph (A) that are distrib-  
20 uted to a State or a political subdivision of a  
21 State may only be used for correctional pur-  
22 poses.”.

1 **SEC. 7. PRIORITY FOR DISTRIBUTING FEDERAL FUNDING**  
2 **AND PROPERTY TO STATE AND LOCAL LAW**  
3 **ENFORCEMENT.**

4 (a) ANNUAL CERTIFICATION.—The Secretary of  
5 Homeland Security shall annually submit a written certifi-  
6 cation to the Attorney General that identifies the States  
7 and units of local government that are not complying with  
8 detainers issued pursuant to section 287(d) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1357(d)).

10 (b) PRIORITY FOR COMPLIANT JURISDICTIONS.—The  
11 Attorney General shall give priority to the jurisdictions  
12 that are not listed in the certification described in sub-  
13 section (a) when selecting recipients of—

14 (1) funding from the Edward Byrne Memorial  
15 Justice Assistance Grant Program authorized under  
16 title I of the Omnibus Crime Control and Safe  
17 Streets Act of 1968 (34 U.S.C. 10151 et seq.);

18 (2) excess Federal equipment purchased pursu-  
19 ant to section 281 of title 10, United States Code  
20 (commonly referred to as the 1122 Program); and

21 (3) excess Federal property transferred pursu-  
22 ant to section 2576a of title 10, United States Code  
23 (commonly referred to as the 1033 Program).

○