

HOUSE BILL No. 2771

By Committee on Federal and State Affairs

Requested by Ed Klumpp

2-10

1 AN ACT concerning enforcement of United States immigration and
2 enforcement detainers by a county sheriff operating a county jail;
3 requiring municipal insurance pools to provide coverage of law
4 enforcement agencies enforcing federal law; requiring the state to pay
5 certain judgements in federal civil action and provide legal
6 representation by the attorney general; updating the interlocal
7 cooperation act; amending K.S.A. 12-2904 and repealing the existing
8 section.
9

10 Be it enacted by the Legislature of the State of Kansas:

11 New Section 1. (a) Any sheriff operating a jail pursuant to K.S.A. 19-
12 1901, and amendments thereto, has authority to detain a person with-

13 (1) ~~A facially sufficient~~ immigration detainer request issued by the
14 United States immigration and customs enforcement (ICE) ~~on form I-247A~~
15 ~~issued pursuant to 8 U.S.C. §§ 1226 and 1357 and hold such~~ person for up
16 to 48 hours without criminal charges for the purpose of transferring
17 custody to ~~the United States immigration and customs enforcement; or~~

18 (2) ~~a warrant as described in subsection (c).~~

19 (b) ~~An immigration detainer request form I-247A presented to a jail~~
20 ~~as provided in subsection (a)(1) is deemed facially sufficient if either of~~
21 ~~the following applies:~~

22 (1) ~~The United States immigration and customs enforcement official~~
23 ~~form I-247A presented to law enforcement:~~

24 (A) ~~Clearly states the identity of the person to be detained;~~

25 (B) ~~has box 1, statement of probable cause, or box 2, transfer of~~
26 ~~custody, completed; and~~

27 (C) ~~is signed by the federal immigration official; or~~

28 (2) ~~the United States immigration and customs enforcement form I-~~
29 ~~247A meets the requirement of subsections (b)(1)(A) and (C) but not~~
30 ~~subsection (c)(1)(B) and is supported by a signed warrant as described in~~
31 ~~subsection (d) or other affidavit or official documentation provided to law~~
32 ~~enforcement stating the United States immigration and customs~~
33 ~~enforcement has probable cause to believe that the person to be detained is~~
34 ~~a removable alien under federal immigration law and United States~~
35 ~~immigration and customs enforcement.~~

only an

that is accompanied by a judicial warrant signed by a neutral

detached magistrate or judge of a state or federal court of competent jurisdiction. No such
warrant shall issue but on probable cause, supported by oath or affirmation, particularly
describing the person to be seized. Such judicial warrant shall authorize holding the

ICE

strikes in lines 12, 13-15 and 17-19; in line
19, by striking all after "(b)"; by striking
all in lines 20-35

1 ~~(c) A warrant satisfying subsection (a)(2) or (b)(2) includes:~~
2 ~~(1) A United States department of homeland security form I-200,~~
3 ~~warrant for arrest of alien; or~~
4 ~~(2) a United States immigration and customs enforcement form I-205,~~
5 ~~warrant of removal or a successor warrant or other warrant authorized by~~
6 ~~federal law.~~
7 ~~(d) After reviewing the form I-247A and finding that such form~~
8 ~~complies with the requirements of subsection (b), a sheriff operating a jail~~
9 ~~having custody of a person under the authority of subsection (a) shall:~~
10 ~~(1) Inform the person that such person is being held pursuant to an~~
11 ~~immigration detainer request issued by the United States immigration and~~
12 ~~customs enforcement;~~
13 ~~(2) provide a copy of the form I-247A to the person being held as~~
14 ~~soon as practicable;~~
15 ~~(3) inform the United States immigration and customs enforcement~~
16 ~~that such person is in custody of the sheriff on an immigration detainer;~~
17 ~~and~~
18 ~~(4) complete the law enforcement agency section of the form I-247A~~
19 ~~and submit such form to the United States immigration and customs~~
20 ~~enforcement.~~
21 ~~(e) The sheriff operating a jail shall release a person being held under~~
22 ~~subsection (a) upon:~~
23 ~~(1) The receipt of a subsequent form I-247A with the box checked~~
24 ~~canceling the detainer request;~~
25 ~~(2) the passing of 48 hours from the time of detention without~~
26 ~~pending criminal charges on the United State immigration and customs~~
27 ~~enforcement detainer;~~
28 ~~(3) a finding the detainer does not meet the requirements of~~
29 ~~subsection (b); or~~
30 ~~(4) the person who is being held provides proof of citizenship of the~~
31 ~~United States or has lawful immigration status in the United States.~~
32 ~~(f) As used in this section, "proof of citizenship" includes:~~
33 ~~(1) A birth certificate;~~
34 ~~(2) a United States passport indicating citizenship;~~
35 ~~(3) an official United States document showing completed~~
36 ~~naturalization of citizenship;~~
37 ~~(4) a court order declaring a person's United States citizenship; or~~
38 ~~(5) any other official document of the United States or the state of~~
39 ~~Kansas indicating the person is a United States citizen.~~
40 New Sec. 2. Any municipal insurance pool issuing liability coverage
41 for law enforcement under the Kansas municipal group-funded pool act
42 shall continue such coverage and include coverage for law enforcement
43 operations authorized by the covered agency enforcing federal law in

Strike all in lines 1-30; in line 31, by striking all before the period

Pursuant to the provisions of subsection (a), no sheriff shall be required or authorized to detain any individual based solely on an administrative warrant issued by ICE, including, but not limited to, United States department of homeland security form I-200 or United States immigration and customs enforcement form I-205.

(c)

1 cooperation with federal agencies to the same extent of the coverage for
2 enforcing state and local law regardless of whether the cooperation is
3 under a written agreement and whether the officers involved are deputized
4 by the federal agency. If the United States department of justice or the
5 Kansas office of the attorney general does not provide legal representation
6 in an action against the covered local law enforcement agency, the
7 municipal insurance pool coverage shall provide the legal representation.
8 The municipal insurance pool may also provide legal representation to
9 protect its interest in a case in which the United States department of
10 justice or the Kansas office of the attorney general is providing legal
11 representation.

12 New Sec. 3. In any federal civil action against a law enforcement
13 agency or an officer working under an agreement with the United States
14 immigration and customs enforcement for a 287g program authorized by 8
15 U.S.C. § 1357(g), if a judgement is rendered against such agency or such
16 officer of the agency, the state shall pay the judgement costs or any portion
17 thereof that the United States department of justice has failed to cover if
18 the agency or officer was acting in good faith.

19 New Sec. 4. (a) If a civil action is brought against a law enforcement
20 agency that has entered into an ICE 287(g) agreement or an officer of such
21 law enforcement agency who has been deputized under an ICE 287(g)
22 agreement and such law enforcement agency or officer was acting in good
23 faith under the terms of an ICE 287(g) agreement, the attorney general
24 shall represent or provide representation of the law enforcement agency
25 and officer in federal litigation.

26 (b) If a habeas corpus action is filed against an agency acting in good
27 faith to hold a person under authority of an ICE detainer, the office of the
28 attorney general shall provide legal representation at the habeas corpus
29 hearing.

30 Sec. 5. K.S.A. 12-2904 is hereby amended to read as follows: 12-
31 2904. (a) Subject to the limitations of subsection (g), any power or powers,
32 privileges or authority exercised or capable of exercise by a public agency
33 of this state including but not limited to those functions relating to
34 economic development, public improvements, public utilities, police
35 protection, public security, public safety and emergency preparedness,
36 including but not limited to, intelligence, antiterrorism and disaster
37 recovery, libraries, data processing services, educational services, building
38 and related inspection services, flood control and storm water drainage,
39 weather modification, sewage disposal, refuse disposal, park and
40 recreational programs and facilities, ambulance service, fire protection, the
41 Kansas tort claims act or claims for civil rights violations, may be
42 exercised and enjoyed jointly with any other public agency of this state or
43 with any private agency, and jointly with any public agency of any other

1 state or of the United States to the extent that the laws of such other state
2 or of the United States permit such joint exercise or enjoyment. Any
3 agency of the state government when acting jointly with any public or
4 private agency may exercise and enjoy all of the powers, privileges and
5 authority conferred by this act upon a public agency.

6 (b) Any public agency may enter into agreements with one or more
7 public or private agencies for joint or cooperative action pursuant to the
8 provisions of this act. Appropriate action by ordinance, resolution or
9 otherwise pursuant to law of the governing bodies of the participating
10 public agencies shall be necessary before any such agreement may enter
11 into force.

12 (c) Any public agency may enter into agreements with Native
13 American Indian tribes for joint or cooperative actions. Such agreements
14 shall be considered to be an interlocal agreement and shall be subject to
15 the procedures and limitations of the interlocal cooperation act.

16 The provisions of this subsection shall not be construed as authorizing
17 a public agency to enter into a gaming compact pursuant to the interlocal
18 cooperation act.

19 (d) Any such agreement shall specify the following:

20 (1) Its duration.

21 (2) The precise organization, composition and nature of any separate
22 legal or administrative entity created thereby together with the powers
23 delegated thereto.

24 (3) Its purpose or purposes.

25 (4) The manner of financing the joint or cooperative undertaking and
26 of establishing and maintaining a budget therefor.

27 (5) The permissible method or methods to be employed in
28 accomplishing the partial or complete termination of the agreement and for
29 disposing of property upon such partial or complete termination.

30 (6) Any other necessary and proper matters.

31 (e) In addition to the requirements of subsection (d), if the agreement
32 does not establish a separate legal entity to conduct the joint or cooperative
33 undertaking, the agreement also shall contain the following:

34 (1) Provision for an administrator or a joint board or one of the
35 participating public agencies to be responsible for administering the joint
36 or cooperative undertaking. In the case of a joint board public agencies
37 party to the agreement shall be represented.

38 (2) The manner of acquiring, holding and disposing of real and
39 personal property used in the joint or cooperative undertaking.

40 (f) No agreement made pursuant to this act shall relieve any public
41 agency of any obligation or responsibility imposed upon it by law except
42 that to the extent of actual and timely performance thereof by a joint board
43 or other legal or administrative entity created by an agreement made

1 hereunder, such performance may be offered in satisfaction of the
2 obligation or responsibility.

3 (g) Every agreement made hereunder, except: (1) Agreements
4 between two or more public agencies establishing a council or other
5 organization of local governments for the study of common problems of an
6 area or region and for the promotion of intergovernmental cooperation;
7 and (2) agreements entered into regarding joint or cooperative action that
8 are subject to the oversight and regulation of a Kansas regulatory agency,
9 prior to and as a condition precedent to its entry into force, shall be
10 submitted to the attorney general who shall determine whether the
11 agreement is in proper form and compatible with the laws of this state. The
12 attorney general shall approve any agreement submitted hereunder unless
13 the attorney general shall find that it does not meet the conditions set forth
14 herein and shall detail in writing addressed to the governing bodies of the
15 public and private agencies concerned the specific respects in which the
16 proposed agreement fails to meet the requirements of law. Failure to
17 disapprove an agreement submitted hereunder within 90 days of its
18 submission shall constitute approval thereof.

19 (h) *For the purposes of entering an agreement with the United States*
20 *immigration and customs enforcement for a 287g program authorized by 8*
21 *U.S.C. § 1357(g), a sheriff shall be exempt from subsections (a), (b), and*
22 *(c) and may sign such agreement without further authorization of the*
23 *board of county commissioners.*

24 Sec. 6. K.S.A. 12-2904 is hereby repealed.

25 Sec. 7. This act shall take effect and be in force from and after its
26 publication in the statute book.