

North Carolina Criminal Law Blog

Legislature Revisits Law on Immigration Detainers

September 2, 2025 [Brittany Bromell](#)

[<https://nccriminallaw.sog.unc.edu/author/bwilliams/>](https://nccriminallaw.sog.unc.edu/author/bwilliams/)

A few months ago, I blogged about the legislative changes that took effect last year surrounding the **processing of defendants who are subject to immigration detainers** [<https://nccriminallaw.sog.unc.edu/immigration-detainers-2/>](https://nccriminallaw.sog.unc.edu/immigration-detainers-2/). The North Carolina General Assembly revisited the topic this legislative session in **S.L. 2025-85 (H 318)**

[<https://ncleg.gov/EnactedLegislation/SessionLaws/PDF/2025-2026/SL2025-85.pdf>](https://ncleg.gov/EnactedLegislation/SessionLaws/PDF/2025-2026/SL2025-85.pdf).

Effective October 1, 2025, the law modifies some of the provisions enacted by **S.L. 2024-55 (H 10)**

[<https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H10v6.pdf>](https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H10v6.pdf) and creates a new pretrial release procedure that requires judicial officials to determine legal residency for defendants charged with certain offenses.

Offenses triggering a residency determination.

Under existing law, the administrator of a detention facility must attempt to determine if a person confined within the facility is a legal resident of the United States if the person is charged with any of the following offenses:

- a felony under G.S. 90-95 (felonies related to controlled substances)
- a felony under G.S. Chapter 14 Article 6 (homicide offenses), Article 7B (rape and other sex offenses), Article 10 (kidnapping and abduction), Article 10A (human trafficking offenses), or Article 13A (gang offenses)
- a Class A1 misdemeanor or felony assault

- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order).

Effective for any person confined in a detention facility on or after October 1, 2025, the following categories of offenses trigger the inquiry:

- any felony
- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of G.S. Chapter 14
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order)
- any offense involving impaired driving as defined in G.S. 20-4.01.

This list is more expansive than the previous list. All felonies, all impaired driving offenses, and almost all assaults will be covered under the amended law.

Issuing the detention order.

If the prisoner's status as a legal resident or citizen of the United States cannot be determined, the administrator or other person in charge of the facility must send a query to ICE. As was enacted last year, if the administrator in charge of a confinement facility receives notice that ICE has issued a detainer and administrative warrant for a person charged with a criminal offense and currently confined in that facility, the administrator is required to take the prisoner before a state judicial official before the prisoner's release. The judicial official is provided with a copy of the detainer and administrative warrant. If the person appearing before the judicial official is determined to be the person subject to the detainer and administrative warrant, the judicial official is required to issue an order directing the prisoner be held in custody until the earliest of the following:

- the passage of 48 hours from receipt of the ICE detainer and administrative warrant.
- ICE takes custody of the prisoner.
- ICE rescinds the detainer.

The new law modifies this provision to require the judicial official's order to direct not only that the prisoner to be held in custody but also to be transferred to the custody of an ICE officer upon that officer's appearance at the facility and request for custody. The law also amends the 48-hour period to begin at the time the person would otherwise be released (*i.e.*, the person satisfies pretrial release conditions), rather than beginning from the time of receipt of the detainer and administrative warrant.

Notification to ICE of pending release.

The act also adds a new provision, G.S. 162-62(b1)(4), requiring that for any prisoner held pursuant to the detention order (**[AOC-CR-662](https://www.nccourts.gov/assets/documents/forms/AOC-CR-662ff%2011-22-2024.pdf?VersionId=Fk3cVnjYei6v3bIVPSHgZMY4W_g25pqg)** [<https://www.nccourts.gov/assets/documents/forms/AOC-CR-662ff%2011-22-2024.pdf?VersionId=Fk3cVnjYei6v3bIVPSHgZMY4W_g25pqg>](https://www.nccourts.gov/assets/documents/forms/AOC-CR-662ff%2011-22-2024.pdf?VersionId=Fk3cVnjYei6v3bIVPSHgZMY4W_g25pqg)), the administrator or other person in charge of the facility notify ICE of the date and time that the prisoner will be released pursuant to the order (*i.e.*, when the 48 hours will expire). The notification must be made no later than two hours after the time when the prisoner would otherwise be released from the facility and in the manner indicated on the **[Department of Homeland Security Immigration Detainer – Notice of Action form](https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf)** [<https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf>](https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf).

Determining pretrial release conditions.

Under the existing law, detention facilities bear the responsibility for making queries about a person's residency status, keeping up with issuance of detainers and administrative warrants, and ensuring that the 48-hour period is properly applied. This session law creates a new pretrial release rule that would distribute some of that responsibility to judicial officials. Effective for persons appearing before a judicial official for a determination of pretrial release conditions on or after October 1, 2025, new G.S. 15A-534(d4) provides that when determining conditions of pretrial release for a defendant charged with certain offenses, the judicial official must attempt to determine if the defendant is a legal resident or citizen of the United States. The list of offenses is the same as the one set forth above:

- any felony

- a Class A1 misdemeanor under Article 6A (unborn victims), Article 7B (rape and other sex offenses), or Article 8 (assaults) of G.S. Chapter 14
- any violation of G.S. 50B-4.1 (violation of a domestic violence protective order)
- any offense involving impaired driving as defined in G.S. 20-4.01.

If the defendant's status as a legal resident or citizen of the United States cannot be determined, the judicial official must (1) set conditions of pretrial release, and (2) commit the defendant to a facility to be fingerprinted and held for a period of 2 hours after a query to ICE. If no detainer and administrative warrant are received within that two-hour period, then the defendant must be released upon satisfaction of the conditions set forth in the [AOC-CR-200](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1) pretrial release order. If a detainer and administrative warrant are received within that two-hour period, then the defendant should be again taken before a judicial official and processed pursuant to the provisions of G.S. 162-62(b1), during which time the judicial official will issue the [AOC-CR-662](https://www.nccourts.gov/assets/documents/forms/AOC-CR-662ff%2011-22-2024.pdf?VersionId=Fk3cVnjYei6v3bIVPSHgZMY4W_g25pqg) detention order.

Navigating the time frames.

Though the new laws don't take effect until October 1, there is already some question as to what actions may be taken when, given that the law describes different proceedings at two hours and at 48 hours. First, if a judicial official is unable to determine the defendant's status as a legal resident or citizen of the United States, the defendant can be held for up to two hours while the judicial official awaits the results of the ICE query. If no immigration detainer and administrative warrant are issued within this time frame, then no further consideration of other time-sensitive procedures under these provisions is necessary. If an immigration detainer and administrative warrant are issued within two hours after the judicial official's query, then the other time-sensitive procedures become relevant.

The 48-hour detention applies only when the defendant is “otherwise eligible for release” from state custody—in other words, it applies when the defendant is able to satisfy conditions of release as set forth in the **[AOC-CR-200](#)**

[https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1)

[VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1)>. For example, if the judicial official imposes a written promise or unsecured bond, then the 48-hour immigration detention would begin immediately. If the defendant is able to quickly post a secured bond, then the 48-hour immigration detention begins at the time the bond is accepted by the judicial official. If the defendant is not able to satisfy the conditions of release that are imposed (*i.e.*, not able to make bond), then the 48-hour detention does not apply because the defendant is not “otherwise eligible for release.” In those circumstances, there is no immediate need for the jail to notify ICE as required under new G.S. 162-62(b1)(4), which in turn signals a lack of urgency for ICE to come take custody of the defendant.

If, at a later time, the defendant is able to make bond, then the 48-hour detention period will begin at that time, having the following practical effects:

- Although the bond has been posted, the defendant remains in custody and under immigration detention for up to 48 hours.
- The jail administrator or other person in charge of the facility has two hours from the time the bond is posted to notify ICE of when the 48 hours is set to expire.
- If by the end of the 48-hour period ICE has failed to either take custody of the defendant or rescind the detainer, the defendant will be released pursuant to the conditions set forth in the **[AOC-CR-200](#)**

[https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1)

[VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1](https://www.nccourts.gov/assets/documents/forms/cr200_1.pdf?VersionId=VZoCoybvbYxuPJamOVXyLK6LadBpOzo1)>.

If you have questions about the changes enacted by **[S.L. 2024-55 \(H 10\)](#)** <https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H10v6.pdf> or the pending changes in **[S.L. 2025-85 \(H 318\)](#)**

<https://ncleg.gov/EnactedLegislation/SessionLaws/PDF/2025-2026/SL2025-85.pdf>>, please feel free to send me an email at **bwilliams@sog.unc.edu**.



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