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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Williams

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SUMMARY

- Names the bill the Protecting Ohio Communities Act.
- Requires every law enforcement agency in Ohio to take certain actions to cooperate with federal officials in the enforcement of federal immigration law.
- Requires a law enforcement agency to participate in federal programs to share information about arrestees with federal immigration authorities.
- Requires a law enforcement agency to honor federal detainer requests regarding persons who are unlawfully present in the U.S. and otherwise to cooperate and comply with federal officials in the enforcement of federal immigration law.
- Adds a provision to Ohio law that mirrors a provision of federal law that makes certain aliens ineligible for state or local public benefits.
- Requires a state or local governmental entity that administers a state or local public benefit to use the federal Systematic Alien Verification for Entitlements Program (SAVE) to verify aliens' eligibility for those benefits.
- Prohibits any state or local governmental agency or political subdivision from adopting an ordinance, policy, directive, rule, or resolution that prohibits or restricts a public official or employee from taking certain actions with respect to immigration enforcement.
- Requires each law enforcement agency and each state or local governmental entity that administers a public benefit to notify its officers and employees of the bill's requirements.
- Requires each county, township, and municipal corporation to submit an annual report to the Attorney General, confirming that the entity is complying with the bill.

- Specifies that a political subdivision or local law enforcement agency that is not in compliance with the bill is ineligible to receive homeland security funding and 10% of any Local Government Fund (LGF) distributions it would otherwise receive from the state.
- Redirects forfeited LGF payments to fund the State Highway Patrol.
- States that the General Assembly makes several findings and declarations concerning state and local cooperation with federal immigration enforcement efforts.
- Declares an emergency.
- Includes a severability clause.

DETAILED ANALYSIS

Protecting Ohio Communities Act

The bill specifies that it must be known as the Protecting Ohio Communities Act.¹

Law enforcement activities

Background – enforcement of federal immigration law

The U.S. Constitution reserves to the federal government the power to make and enforce immigration laws. State or local law enforcement agencies cannot independently determine whether a person is unlawfully present in the U.S. and cannot arrest or detain a person solely on that basis. Instead, federal authorities are responsible for enforcing immigration laws. Federal immigration authorities may request assistance from state and local officials but cannot force them to help. Federal law and Ohio law require state and local government entities to allow their employees to exchange citizenship or immigration status information with federal immigration officials, but the federal government cannot otherwise require state or local officials to assist federal immigration authorities.²

One of the primary ways in which state and local law enforcement agencies come into contact with federal immigration authorities is through the federal Criminal Alien Program. Under the program, when a state or local law enforcement agency arrests a person and submits the person's fingerprints to the Federal Bureau of Investigation (FBI) under standard booking procedures, the FBI notifies U.S. Immigration and Customs Enforcement (ICE) of the person's identity.

If ICE determines that the person appears to be unlawfully present in the U.S. and decides to pursue the person's removal based on ICE priorities, ICE submits a detainer request to the state or local agency, asking the agency to keep the person in custody for up to 48 hours after the person is scheduled to be released from state or local custody, so that ICE can arrange to take

¹ Section 5 of the bill.

² R.C. 9.63. See also 8 United States Code (U.S.C.) 1373; *Arizona v. United States*, 567 U.S. 387, 411 (2012); and *Printz v. United States*, 521 U.S. 898, 935 (1997).

the person into federal custody.³ Under federal law, the state or local agency is not required to honor the detainer request. If a court later finds that a detainer was not constitutionally valid, the state or local officials – not ICE – may be held liable for wrongfully imprisoning the person.⁴

Cooperation with federal immigration authorities

The bill requires every law enforcement agency in Ohio to take certain actions to cooperate with federal officials in the enforcement of federal immigration law. “Law enforcement agency” means a municipal or township police department, the office of a sheriff, the State Highway Patrol, and any other state or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.

First, under the bill, a law enforcement agency must participate in any available program operated by the U.S. Department of Homeland Security or its successor department that allows the law enforcement agency to submit to federal authorities information about an arrestee in order to enable those authorities to determine whether the arrestee is unlawfully present in the U.S. (Currently, this would be the Criminal Alien Program discussed above.) Further, the bill requires a law enforcement agency immediately to report to the appropriate U.S. immigration officials the identity of any arrestee whom a peace officer has reasonable cause to believe is unlawfully present in the U.S.

Upon receiving a lawful federal request or order to do so, the bill requires a law enforcement agency to detain a person who is unlawfully present in the U.S. until the person is transferred into federal custody. And, a law enforcement agency otherwise must cooperate and comply with federal officials in the enforcement of federal immigration law.

Current Ohio law does appear to require state and local governmental entities to honor ICE detainer requests in at least some circumstances. The Revised Code specifically requires the Department of Rehabilitation and Correction to comply with ICE detainer requests for persons who are being released from state custody after serving a prison term for a felony. And, the statute requires state and local governments to comply with lawful requests for assistance from federal immigration authorities, “to the extent that the request is consistent with the doctrine of federalism.” A local government that violates that requirement is ineligible to receive homeland security funding from the state. It appears that this provision of law has never been enforced or interpreted by a court.⁵

Since 2014, several agencies in Ohio have refused at least one ICE detainer request. However, all of those agencies grant most of the detainer requests they receive. Between 2014 and 2023, Ohio agencies denied a total of 353 out of 33,693 detainer requests, a 1% refusal rate. The Franklin County Jail – Ohio’s agency with the most refusals – refused 298 out of 8,096

³ 8 U.S.C. 1357(d), 1373, and 1644 and 8 Code of Federal Regulations (C.F.R.) 287.7. See also U.S. Immigration and Customs Enforcement, [Criminal Alien Program](#), available at [ice.gov](#) under “Immigration Enforcement.”

⁴ See, for example, *Galarza v. Szalczyk*, 745 F.3d 634, 639 (3d Cir. 2014).

⁵ R.C. 9.63. See also R.C. 2909.30, not in the bill.

requests, for a refusal rate of about 4%. The other Ohio agencies that refused requests during that period refused a total of 1-7 requests each. It is not clear from the available data why the agencies refused the requests. The refusals might have been for reasons other than sanctuary policies, such as that the agencies determined that they did not actually have the relevant person in custody.⁶

Public benefits

Background – aliens' eligibility for benefits under federal law

With certain exceptions, the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provides that any alien (that is, someone who is not a U.S. citizen or national) who is not a “qualified alien” is ineligible for federal, state, or local public benefits. “Qualified alien” includes several categories of persons, including lawful permanent residents and persons who have been granted asylum or refugee status. In general, a person who holds a temporary visa, such as a student or tourist visa, or a person who is unlawfully present in the U.S. is not considered a qualified alien.⁷

Benefits for which an alien must be qualified

On the state or local level, PRWORA generally requires an alien who receives any of the following benefits to be qualified under federal law to receive those benefits:⁸

- Any grant, contract, loan, professional license, or commercial license provided or funded by a state or local government agency, except for certain aliens with temporary employment visas and for foreign nationals who are not physically present in the U.S., and except as otherwise provided under an applicable treaty;
- Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by a state or local government.

Benefits available to anyone

PRWORA does not prevent a state or local government from providing any of the following benefits to an unqualified alien:

- Assistance for health care items and services that are necessary for the treatment of an emergency medical condition, other than for an organ transplant procedure;
- Short-term, noncash, in-kind emergency disaster relief;

⁶ Syracuse University, *Transactional Records Access Clearinghouse (TRAC)*, tracreports.org/phptools/immigration/newdetain/ available at tracreports.org under “Immigration,” “Tools.”

⁷ 8 U.S.C. 1621(a) and 1641(b).

⁸ 8 U.S.C. 1621(c).

- Public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases;
- Programs, services, or assistance that deliver in-kind services at the community level, do not condition assistance on the recipient's income or resources, and are necessary for the protection of life or safety, such as soup kitchens, crisis counseling and intervention, and short-term shelter.

Further, under PRWORA, a state may, by statute, affirmatively provide eligibility for unqualified aliens for benefits they otherwise could not receive. Ohio has one such exception, which the bill does not change. Under continuing law, an unauthorized worker, or the worker's dependent, is eligible for workers' compensation in Ohio if the worker is injured or killed at work or contracts an occupational disease. Although the person's employer would violate federal law by employing the person, the employer still must pay premiums and assessments to the state workers' compensation fund to cover the person as an employee. In exchange, the employer is not liable to the worker or the worker's dependents for damages caused by the injury, death, or disease.⁹

Finally, PRWORA does not apply to education. The U.S. Supreme Court has ruled that the states may not deny a public K-12 education to children who are unlawfully present in the U.S. This decision is based on the Equal Protection Clause of the 14th Amendment, which the Court has found to give a certain level of protection to persons who are unlawfully present.¹⁰

That decision does not apply to higher education. Ohio law does not prohibit a student who is unlawfully present from attending a college or university, but such a student cannot be considered a resident of Ohio for purposes of receiving in-state tuition or other state subsidies.¹¹ An unlawfully present student also is ineligible for federal student grants or loans.¹²

Confirming eligibility for state or local benefits

The bill adds a provision to Ohio law that mirrors the provision of PRWORA that makes certain aliens ineligible for state or local public benefits. And, the bill requires a state or local governmental entity that administers a state or local public benefit to use the federal Systematic Alien Verification for Entitlements Program (SAVE) to verify aliens' eligibility for those benefits. Although continuing law requires state agencies to provide benefits only to qualified aliens, the Revised Code currently does not require the use of SAVE to verify applicants' eligibility.

Under the bill, a "state or local governmental entity" is any agency, board, bureau, commission, council, department, division, office, or other organized body established by the

⁹ 8 U.S.C. 1621(b) and (d) and R.C. 4123.01(A)(1)(b), not in the bill. See also *Rajeh v. Steel City Corp.*, 2004-Ohio-3211 (7th Dist. Ct. App. 2004).

¹⁰ *Plyler v. Doe*, 457 U.S. 202 (1982).

¹¹ R.C. 3333.31(F)(2), not in the bill.

¹² U.S. Department of Education, Federal Student Aid Office, [Eligibility for Non-U.S. Citizens](#), available at studentaid.gov via a keyword search for "noncitizen."

state or a political subdivision for the exercise of any function of the state or a political subdivision. “State or local public benefit” has the same meaning as under PRWORA.¹³

SAVE is a free, voluntary service offered by USCIS that allows a government agency to submit information provided by an alien applicant over the internet and to receive a response from USCIS about whether the applicant is eligible to receive the benefit. An agency could make benefit eligibility determinations without using SAVE. However, SAVE provides additional verification tools that otherwise might not be available to an agency, such as the ability to confirm that the number on a person’s permanent resident card is associated with the person’s name in federal records.

According to U.S. Citizenship and Immigration Services (USCIS), the following state agencies in Ohio currently use SAVE to verify benefits eligibility. No local agencies are listed as currently using SAVE.¹⁴

Agency	Purpose
Department of Job and Family Services	Food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, refugee assistance, disability insurance, unemployment insurance
Department of Medicaid	Medicaid
Department of Public Safety	Driver’s license, state ID card, commercial driver’s license
State Board of Nursing	Occupational licensing
Secretary of State	Voter registration and voter list maintenance

Under the bill, a number of additional agencies must begin using SAVE, such as occupational licensing boards and commissions other than the State Board of Nursing. And, although it appears that few, if any, local governments administer public benefits in Ohio, the bill requires those entities to use SAVE for that purpose.

Prohibition against sanctuary policies

In addition to requiring governmental entities to comply with ICE detainer requests and use SAVE to verify eligibility for local benefits, the bill includes further prohibitions that are designed to prevent any agency from adopting other policies that limit cooperation with federal immigration authorities, often called “sanctuary policies.” Under the bill, a state or local government agency or political subdivision is prohibited from adopting an ordinance, policy,

¹³ R.C. 9.631(A) and (C) and 9.632(A).

¹⁴ R.C. 9.631(C). See also U.S. Citizenship and Immigration Services, [SAVE](https://uscis.gov/save), available at uscis.gov/save.

directive, rule, or resolution that prohibits or otherwise restricts a public official or employee from doing any of the following:¹⁵

- Complying with the bill’s requirements described above concerning law enforcement and public benefits;
- Inquiring about a person’s name, birthdate, place of birth, or citizenship or immigration status in the course of investigating or prosecuting a violation of any law or ordinance;
- Maintaining information about a person’s citizenship or immigration status;
- Sending information to, or requesting or receiving information from, a federal, state, or local government agency or employee concerning a person’s citizenship or immigration status or for the purpose of determining a person’s citizenship or immigration status;
- Complying with any request by a federal agency engaged in the enforcement of federal immigration law for information, access, or assistance, regardless of whether the federal agency has obtained a warrant to compel the state or local government agency or political subdivision to comply with the request, unless federal law prohibits the state or local government agency or political subdivision from complying with the request.

At least one local jurisdiction in Ohio currently has a formalized sanctuary policy of the kind described above.¹⁶ The bill imposes penalties against government entities that have such policies (see “**Funding penalties**,” below).

Compliance reports

The bill requires each law enforcement agency and each state or local governmental entity that administers a public benefit must notify its officers and employees of the bill’s requirements. Further, each county, township, and municipal corporation must submit an annual report to the Attorney General, confirming that the entity is complying with the bill.¹⁷

Funding penalties

The bill allows any member of the General Assembly who believes that a county, township, or municipal corporation or its law enforcement agency is not complying with the bill’s requirements to file a complaint with the Attorney General. Upon receiving the complaint, the Attorney General must investigate it and submit a report of the Attorney General’s findings to the Treasurer of State and the Tax Commissioner.

If the Attorney General determines that the subdivision or its law enforcement agency is not in compliance with the bill’s requirements, then the political subdivision is ineligible to receive homeland security funding and 10% of any Local Government Fund (LGF) distributions it

¹⁵ R.C. 9.631(D).

¹⁶ City of Columbus Mayor’s Office, [Executive Order 2017-01](#) (PDF) (February 3, 2017), available at columbus.gov under “Government,” “Mayor’s Office,” “Executive Orders.”

¹⁷ R.C. 9.632(A) and 9.633.

would otherwise receive from the state, unless and until the Attorney General certifies in an addendum to the Attorney General’s initial report that the political subdivision or law enforcement agency is in compliance with the bill.

If the subdivision also has its LGF reduced due to its use of traffic cameras under continuing law, those reductions are calculated before the bill’s 10% reduction. Each month, any LGF payments withheld under the bill are transferred to the Public Safety – Highway Purposes Fund.¹⁸ Under continuing law, that fund is used for the purpose of enforcing and paying the expenses of administering laws related to the registration and operation of vehicles on roads and highways, and to the powers and duties of registrar of motor vehicles. However, the bill requires redirected LGF payments to only be used to pay the expenses of the State Highway Patrol.¹⁹

Potential home rule issue

The bill might be vulnerable to a challenge on the ground that it violates the home rule provisions of the Ohio Constitution. Under those provisions, municipal corporations and chartered counties have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations as are not in conflict with general laws. A court might find that the bill violates an Ohio municipality’s or chartered county’s home rule power to decide whether to participate in voluntary federal immigration enforcement programs. The Ohio Supreme Court has ruled that the General Assembly may reduce LGF funds in order to discourage certain local policies. However, to the extent that the bill might allow a member of the public to seek a court order that a municipal corporation or chartered county comply with the bill, a reviewing court might find the bill unenforceable.

Although the General Assembly enacted a less specific law in 2006 that requires municipalities to comply with federal requests for assistance and to allow their employees to communicate with federal authorities, it is not clear whether that provision would be upheld under a home rule analysis because it has not been challenged.²⁰

Legislative declarations

The bill states that the General Assembly makes the following findings and declarations:²¹

- Sanctuary policies that restrict, obstruct, or discourage cooperation with federal immigration authorities are prohibited by such federal laws as Section 642 of the “Omnibus Consolidated Appropriations Act of 1996,” 8 United States Code 1373, which states that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the

¹⁸ R.C. 9.632 and 5747.504, with conforming changes in R.C. 5747.50, 5747.502, 5747.51, and 5747.53.

¹⁹ R.C. 4501.06.

²⁰ Ohio Constitution, Article X, Section 3 and art. XVIII, sec. 3 and R.C. 9.63. See also *Village of Newburgh Heights v. State*, 168 Ohio St.3d 513 (2022).

²¹ Section 4 of the bill.

Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

- In *Arizona v. United States*, 567 U.S. 387 (2012), the Supreme Court of the United States ruled that the United States Congress has the exclusive authority to legislate on immigration matters, that states may not augment the penalties for violating federal immigration laws, that “consultation between federal and state officials is an important feature of the immigration system,” and that “Congress has encouraged the sharing of information about possible immigration violations.”
- Given the supremacy of all federal laws pertaining to immigration, including Section 274 of the “Immigration and Nationality Act,” 8 United States Code 1324, as amended, which prohibits knowingly harboring persons who are unlawfully present in the United States, it is inappropriate and contrary to the public safety and welfare of this state for any public official to encourage, endorse, or otherwise support any public or private organization that seeks to offer so-called “sanctuary protection” to persons who are unlawfully present in the United States.
- Policies that direct state or local employees not to cooperate with federal immigration authorities or that protect persons who are unlawfully present in the United States are contrary to federal law, the interests of this state, and the safety and welfare of the people of this state.
- The bill is necessary to ensure consistency and fairness in the enforcement of the laws of this state.
- The subject of the bill is a matter of statewide concern.

Emergency clause

The bill declares an emergency, meaning that it takes effect immediately and is not subject to the referendum.²²

Severability clause

The bill provides that, if any provision of the bill or the application of the bill to any person or circumstance is held invalid, that invalidity does not affect any other provisions or applications of the bill that can be given effect without the invalid provision or application.²³ The Revised Code already includes a general severability clause, unchanged by the bill, that provides that this standard applies to every provision of the Revised Code.²⁴

²² Section 7 of the bill.

²³ Section 3 of the bill.

²⁴ R.C. 1.50, not in the bill.

HISTORY

Action	Date
Introduced	01-28-25
