
WEST VIRGINIA CODE CHAPTER 15
ARTICLE 16

WV Legislature

§15-16-1. Definitions

(1) "Federal immigration agency" means the United States Department of Justice, the United States Department of Homeland Security, any division within either of those departments, specifically including but not limited to United States Immigration and Customs Enforcement, United States Customs and Border Protection, any successor agency or agencies to the aforesaid, and any other federal agency charged with the enforcement or administration of immigration or border control.

(2) "Immigration law" means the laws of this state or federal law relating to immigrants or immigration, including but not limited to the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

(3) "Immigration detainer" means a facially sufficient written or electronic request issued by a federal immigration agency using that agency's official form to request that another law enforcement agency detain a person based on probable cause to believe that the person to be detained is a removable alien under federal immigration law, including detainers issued pursuant to 8 U.S.C. § 1226 *et seq.* and 8 U.S.C. § 1357 *et seq.*, along with a warrant described in paragraph (C) of this subsection. For purposes of this subsection, an immigration detainer is deemed facially sufficient if:

(A) The federal immigration agency's official form is complete and indicates on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law; or

(B) The federal immigration agency's official form is incomplete and fails to indicate on its face that the federal immigration official has probable cause to believe that the person to be detained is a removable alien under federal immigration law, but is supported by an affidavit, order, or other official documentation that indicates that the federal immigration agency has probable cause to believe that the person to be detained is a removable alien under federal immigration law; and

(C) The federal immigration agency supplies with its detention request a Form I-200 Warrant for Arrest of Alien, or a Form I-205 Warrant of Removal/Deportation, or a successor warrant, or other warrant authorized by federal law.

(4) "Inmate" means a person in the custody of a law enforcement agency.

(5) "Law enforcement agency" for purposes of this article means an agency in this state charged with enforcement of federal, state, county, or municipal laws or with managing custody of persons in this state and includes, but is not limited to, municipal police departments, sheriff's offices, county and state police departments, state college and university police departments, county correctional agencies, and the Division of Corrections and Rehabilitation.

(6) "Local entity" means:

(A) The governing body, and any agents or officers with executive, decision-making, or policymaking authority thereof, of a municipality, county, or other political subdivision of this state, and any subsidiary governmental bodies of those entities;

(B) An officer or employee of or a division, department, or other body that is part of a municipality, county, political subdivision or other authority, including a sheriff, municipal police department, municipal attorney, or county attorney; or

(C) A prosecuting attorney or assistant prosecuting attorney.

(7) "State entity" means the State of West Virginia or any agency, office, board, bureau, commission, department, branch, division, or institution thereof, including institutions under the authority of the West Virginia Higher Education Policy Commission, the Community and Technical System, and all other public postsecondary educational institutions in the state. The term includes any officer, employee or agent of any of the aforesaid.

§15-16-2. Prohibited policies regarding immigration enforcement.

A state entity, local entity, or law enforcement agency shall not adopt or maintain a law, ordinance, resolution, rule, regulation, policy, directive, order, practice, or procedure, formal or informal, written or unwritten, which prohibits or materially restricts the state entity, local entity, or law enforcement agency from complying with or assisting in the enforcement of immigration laws, including, but not limited to, prohibiting or materially restricting the state entity, local entity, or law enforcement agency from prohibiting or otherwise materially restricting any state entity, local entity, or law enforcement agency from assisting in the enforcement of immigration law. This includes prohibitions or restrictions on:

- (a) Inquiries into the immigration status of any person;
- (b) Transmitting, requesting, or receiving information relating to immigration status, lawful or unlawful, of any person to or from any federal immigration enforcement agency;
- (c) Maintaining, archiving, or otherwise storing for subsequent use information relating to an individual's immigration status;
- (d) Exchanging information relating to immigration status with another local entity, state entity, or a federal immigration agency;
- (e) Complying with an immigration detainer, including, but not limited to, refusing to cooperate or comply with a lawfully issued detainer in the absence of a warrant or other order directing compliance with or enforcement of such a detainer;
- (f) Complying with a request from a federal immigration agency to notify the agency before the release of an inmate;
- (g) Providing a federal immigration agency with an inmate's incarceration status or release date;
- (h) Assisting or cooperating with a federal immigration agency, including by providing enforcement assistance;
- (i) Participating in any program or agreement authorized under Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq*;

(j) Permitting a federal immigration officer to enter and conduct enforcement activities at a municipal jail, county jail, or Division of Corrections and Rehabilitation Facility involving or related to the enforcement of federal immigration laws;

WV Legislature

§15-16-3. Mandatory duties of law enforcement agencies regarding immigration detainer.

(a) A law enforcement agency that takes initial custody of a person subject to an immigration detainer shall:

(1) Provide notice to the court authorized to grant or deny the person's release on bail or bond that the person is subject to an immigration detainer;

(2) Record in the person's case file that the person is subject to an immigration detainer; and

(3) Upon determining that the immigration detainer is facially sufficient as defined by §15-16-1 of this code, comply with the requests made in the immigration detainer to the extent required by law.

(b) A law enforcement agency is not required to perform a duty imposed by subsection (a) of this section with respect to a person who has been transferred to the custody of the agency by another law enforcement agency subject to the requirements of this section.

(c) A court of competent jurisdiction which receives notice that a person is subject to an immigration detainer shall cause the fact to be recorded in the court record, regardless of whether the notice is received before or after a judgment in the case.

§15-16-4. Mandatory agreements for housing persons subject to immigration detainers.

(a) Each county jail or municipal jail, to the extent the same may exist, and the Division of Corrections and Rehabilitation shall enter into an agreement or agreements with a federal immigration agency for temporarily housing persons who are the subject of immigration detainers and for the payment of the costs of housing and detaining those persons.

(b) A compliant agreement under this section includes any contract with a federal immigration agency for housing or detaining persons subject to immigration detainers, such as basic ordering agreements, intergovernmental service agreements, agreements authorized by Section 287 of the federal Immigration and Nationality Act, 8 U.S.C. § 1357 *et seq.*, successor agreements, or other similar agreements authorized by federal law.

§15-16-5. Complaint procedure; notice; equitable relief.

(a) Any person, including a federal agency, may file a complaint with the Attorney General alleging that a state entity, local entity, or law enforcement agency has violated or is violating this article. The person shall include with the complaint any evidence the person has in support of the complaint.

(b) A state entity, local entity, or law enforcement agency for which the Attorney General has received a complaint pursuant to this section shall comply with any document requests, including a request for supporting documents, from the Attorney General relating to the complaint.

(c) If the Attorney General determines there is sufficient evidence that a local entity or law enforcement agency has violated or is violating the provisions of this article, the Attorney General may file a petition for declaratory or injunctive relief, mandamus, or other appropriate relief in Circuit Court for Kanawha County, or in the Circuit Court for a county in which the principal office of the entity or agency is located, against the entity or agency suspected of violating this article.

(d) If a court finds a state entity, local entity, or law enforcement agency has violated or is violating this article, the court shall enjoin the violation. The court shall have continuing jurisdiction over the parties and subject matter and may enforce its orders with contempt proceedings as provided by law.

(e) An order approving a consent decree or granting any relief under this section shall include written findings of fact that describe with specificity the existence and nature of the violation.

(f) In an appeal related to a suit brought under this section, the appellate court shall render its final order or judgment with the least possible delay.

§15-16-6. Removal from office for malfeasance, neglect of duty, and failure to faithfully discharge duties of office.

Any elected official who takes official action that results in a law, ordinance, resolution, rule, regulation, policy, directive, order, practice, or procedure to come into or continue in effect that violates the provisions of this article has failed to faithfully execute the duties of his or her office, has acted with neglect of duty, and has engaged in malfeasance in office, and thus may be removed from the same in accordance with Article IV, §6 of the constitution of this state, §6-6-5 of this code, §6-6-7 of this code, or any other applicable provision of the law of this state.

§15-16-7. Attorney General to defend good-faith compliance upon request.

(a) The Attorney General may defend a local entity or law enforcement agency in any action in any court if:

(1) The executive head or governing body, as applicable, of the local entity or law enforcement agency requests the Attorney General 's assistance in the defense; and

(2) The Attorney General determines that the local entity or law enforcement agency that is the subject of the suit has made a good-faith effort to comply with this article.

§15-16-8. Report of violations; whistle-blower protections.

(a) A state entity, local entity, or law enforcement agency shall not discharge, threaten, or otherwise discriminate or retaliate against any official, representative, agent, or employee for reporting a known or probable violation of the provisions of this article to the Attorney General.

(b) All provisions of §6C-1-1 *et seq.* of this code, the Whistle-Blower Law, shall apply to an official, representative, agent, or employee of a state entity, local entity, or law enforcement agency who is discharged, threatened, or otherwise discriminated or retaliated against because he or she reported a known or probable violation of the provisions of this article to the Attorney General.

§15-16-9. Implementation; discrimination prohibited.

(a) This article code shall be implemented in a manner consistent with federal laws and regulations governing immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(b) A state entity, local entity, or law enforcement agency, or a person employed by or otherwise under the direction or control of a state entity, local entity, or law enforcement agency, shall not base its actions under this article on the gender, race, color, religion, language, national origin, or physical disability of a person except to the extent authorized by the United States Constitution, the constitution and laws of this state, or other applicable federal law.