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SENATE BILL NO. 460

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-81.7, relating to authority of law-enforcement officers to determine immigration status following a legal stop, detention, or arrest.*

Patron—Black

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 19.2-81.7 as follows:**

§ 19.2-81.7. Authority to determine immigration status following a legal stop, detention, or arrest.

A. No law-enforcement officer is authorized to make an independent determination of a person's lawful presence in the United States except as provided herein.

B. When a law-enforcement officer lawfully detains, but does not arrest, a person following a lawful stop or detention of such person for a suspected criminal offense or traffic infraction or upon reasonable suspicion of criminal activity, the officer shall inquire, during the detention, as to whether the person (i) was born in a country other than the United States, (ii) is a citizen of a country other than the United States, and (iii) is in the country lawfully, unless to do so would hinder or obstruct an investigation. If based upon the person's responses, the officer has reasonable suspicion to believe the person is or remains in the United States unlawfully, he shall, when practicable, make an Immigration Alien Query to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement (ICE) to verify the person's lawful presence in the United States.

C. The officer shall detain the person only for a reasonable amount of time in order to complete the query to ICE. If, after a reasonable effort and the expiration of a reasonable amount of time, the officer is unable to verify the person's lawful presence in the United States, the officer may not further detain the person for purposes of an immigration query. However, if the officer determines that the person is unlawfully present in the United States and the provisions of § 19.2-81.6 apply, the officer may place the person under arrest. If the officer determines that the person is unlawfully present in the United States and the provisions of § 19.2-81.6 do not apply, the officer may retain custody of the person only for transfer to federal custody when the United States has given notice it will take custody of the person.

D. If the person is initially taken into custody on suspicion of having committed a criminal offense and the officer places the person under custodial arrest, he shall make the same inquiries of the arrestee and, if practicable, of ICE, as set forth in subsection A. If he finds, following such inquiries, reasonable suspicion to believe that the person under arrest is not lawfully present in the United States, he shall communicate to the judicial officer the facts and circumstances underlying his suspicion. If the judicial officer concurs in the determination of the officer and finds probable cause to believe that the person will not appear for trial or hearing, the judicial officer may refuse to admit the person to bail in accordance with § 19.2-120. If the person is taken into custody at a jail, the provisions of § 19.2-83.2 shall apply.

E. Nothing in this section may be construed to allow or require a law-enforcement officer to stop, detain, investigate, arrest, or confine a person based solely on the question of a person's lawful presence in the United States. A law-enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the Constitutions of Virginia and the United States. This section shall be implemented in a manner that is consistent with federal law.

INTRODUCED

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