

AMENDED IN SENATE JUNE 24, 2013

AMENDED IN SENATE JUNE 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 4

Introduced by Assembly Member Ammiano
(Principal coauthors: Assembly Members Alejo and
V. Manuel Pérez)
(Principal coauthor: Senator De León)
(Coauthor: Assembly Member Skinner)

December 3, 2012

An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title 1 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 4, as amended, Ammiano. State government: federal immigration policy enforcement.

Existing federal law authorizes any authorized immigration officer to issue an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

This bill would prohibit a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and

~~Customs Enforcement hold after that individual becomes eligible for release from criminal custody, unless, at the time that the individual becomes eligible for release from criminal custody, certain conditions are met. This bill would prohibit an immigration detainer or suspected or actual immigration status from being the basis for denial of certain pretrial or postconviction services and programs, rights, opportunities, or benefits to individuals in county custody. The bill also would prohibit a law enforcement official from arresting, detaining, or continuing to detain a person based on an administrative warrant entered into the Federal Bureau of Investigation's National Crime Information Center database or a successor or similar database, when the administrative warrant is based solely on a violation of civil immigration law met, including, among other things, that the individual has been convicted of specified crimes.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The United States Immigration and Customs Enforcement's
- 4 (ICE) Secure Communities program shifts the burden of federal
- 5 civil immigration enforcement onto local law enforcement. To
- 6 operate the Secure Communities program, ICE relies on voluntary
- 7 requests, known as ICE holds or detainers, to local law enforcement
- 8 to hold individuals in local jails for additional time beyond when
- 9 they would be eligible for release in a criminal matter.
- 10 (b) State and local law enforcement agencies are not reimbursed
- 11 by the federal government for the full cost of responding to a
- 12 detainer, which can include, but is not limited to, extended
- 13 detention time and the administrative costs of tracking and
- 14 responding to detainers.
- 15 (c) Unlike criminal detainees, which are supported by a warrant
- 16 and require probable cause, there is no requirement for a warrant
- 17 and no established standard of proof, such as reasonable suspicion
- 18 or probable cause, for issuing an ICE detainer request. Immigration
- 19 detainees have erroneously been placed on United States citizens,
- 20 as well as immigrants who are not deportable.

1 (d) The Secure Communities program and immigration detainers
2 harm community policing efforts because immigrant residents who
3 are victims of or witnesses to crime, including domestic violence,
4 are less likely to report crime or cooperate with law enforcement
5 when any contact with law enforcement could result in deportation.
6 The program can result in a person being held and transferred into
7 immigration detention without regard to whether the arrest is the
8 result of a mistake, or merely a routine practice of questioning
9 individuals involved in a dispute without pressing charges. Victims
10 or witnesses to crimes may otherwise have recourse to lawful status
11 (such as U-visas or T-visas) that detention resulting from the Secure
12 Communities program obstructs.

13 (e) It is the intent of the Legislature that this act shall not be
14 construed as providing, expanding, or ratifying the legal authority
15 for any state or local law enforcement agency to detain an
16 individual on an immigration hold.

17 SEC. 2. Chapter 17.1 (commencing with Section 7282) is added
18 to Division 7 of Title 1 of the Government Code, to read:

19

20 CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED
21 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

22

23 7282. For purposes of this chapter, the following terms have
24 the following meanings:

25 (a) “Conviction” shall have the same meaning as subdivision
26 (d) of Section 667 of the Penal Code.

27 (b) “Eligible for release from ~~criminal~~ custody” means that the
28 individual may be released from ~~criminal~~ custody because one of
29 the following conditions has occurred:

30 (1) All criminal charges against the individual have been
31 dropped or dismissed.

32 (2) The individual has been acquitted of all criminal charges
33 filed against him or her.

34 (3) The individual has served all the time required for his or her
35 sentence.

36 (4) The individual has posted a bond.

37 (5) The individual is otherwise eligible for release under state
38 or local law, or local policy.

39 (c) “Immigration hold” means an immigration detainer issued
40 by an authorized immigration officer, pursuant to Section 287.7

1 of Title 8 of the Code of Federal Regulations, that requests that
2 the law enforcement official to maintain custody of the individual
3 for a period not to exceed 48 hours, excluding Saturdays, Sundays,
4 and holidays, and to advise the authorized immigration officer
5 prior to the release of that individual.

6 ~~(d) “Administrative warrant” means an immigration warrant~~
7 ~~issued by ICE, or a successor or similar federal agency charged~~
8 ~~with enforcement of civil immigration laws, used as a noncriminal,~~
9 ~~civil warrant for immigration purposes.~~

10 (e)

11 (d) “Law enforcement official” means any local agency or
12 officer of a local agency authorized to enforce criminal statutes,
13 regulations, or local ordinances or to operate jails or to maintain
14 custody of individuals in jails, and any person or local agency
15 authorized to operate juvenile detention facilities or to maintain
16 custody of individuals in juvenile detention facilities.

17 (f)

18 (e) “Local agency” means any city, county, city and county,
19 special district, or other political subdivision of the state.

20 (g)

21 (f) “Serious felony” means any of the offenses listed in
22 subdivision (c) of Section 1192.7 of the Penal Code and any offense
23 committed in another state which, if committed in California,
24 would be punishable as a serious felony as defined by subdivision
25 (c) of Section 1192.7 of the Penal Code.

26 (h)

27 (g) “Violent felony” means any of the offenses listed in
28 subdivision (c) of Section 667.5 of the Penal Code and any offense
29 committed in another state which, if committed in California,
30 would be punishable as a violent felony as defined by subdivision
31 (c) of Section 667.5 of the Penal Code.

32 ~~7282.5.—(a) A law enforcement official has the discretion to~~
33 ~~detain an individual on the basis of an immigration hold after that~~
34 ~~individual becomes eligible for release from criminal custody,~~
35 ~~only if both of the following conditions are satisfied:~~

36 ~~(1) The individual has been convicted of a serious or violent~~
37 ~~felony that, if committed in California on January 1, 2013, would~~
38 ~~result in a sentence to state prison, according to a criminal~~
39 ~~background check or documentation provided to the law~~

1 enforcement official by United States Immigration and Customs
2 Enforcement.

3 (2) ~~The continued detention of the individual on the basis of the~~
4 ~~immigration hold would not violate any federal, state, or local law,~~
5 ~~or any local policy.~~

6 (b) ~~If either of the conditions set forth in subdivision (a) is not~~
7 ~~satisfied, an individual shall not be detained on the basis of an~~
8 ~~immigration hold after that individual becomes eligible for release~~
9 ~~from criminal custody.~~

10 (c) ~~An immigration detainer or suspected or actual immigration~~
11 ~~status shall not be a basis to deny any pretrial or postconviction~~
12 ~~services and programs, rights, opportunities, or benefits to~~
13 ~~individuals in county custody, including alternatives to~~
14 ~~incarceration, rehabilitation, drug treatment, educational and~~
15 ~~vocational programs, early release, probation, bail, and release on~~
16 ~~their own recognizance.~~

17 (d) ~~A law enforcement official shall not arrest, detain, or~~
18 ~~continue to detain a person based on an administrative warrant~~
19 ~~entered into the Federal Bureau of Investigation's National Crime~~
20 ~~Information Center database or a successor or similar database~~
21 ~~maintained by the United States, when the administrative warrant~~
22 ~~is based solely on a violation of civil immigration law.~~

23 7282.5. (a) *A law enforcement official shall have discretion*
24 *to cooperate with federal immigration officials by detaining an*
25 *individual on the basis of an immigration hold after that individual*
26 *becomes eligible for release from custody only if the continued*
27 *detention of the individual on the basis of the immigration hold*
28 *would not violate any federal, state, or local law, or any local*
29 *policy, and only under any of the following circumstances:*

30 (1) *The individual has been convicted of a serious or violent*
31 *felony identified in subdivision (c) of Section 1192.7 of, or*
32 *subdivision (c) of Section 667.5 of, the Penal Code.*

33 (2) *The individual has been convicted of a felony punishable by*
34 *imprisonment in the state prison.*

35 (3) *The individual has been convicted within the past five years*
36 *of a misdemeanor for a crime that is punishable as either a*
37 *misdemeanor or a felony for, or has been convicted at any time of*
38 *a felony for, any of the following offenses:*

- 1 (A) Assault, as specified in, but not limited to, Sections 217.1,
2 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5,
3 4500, and 4501 of the Penal Code.
- 4 (B) Battery, as specified in, but not limited to, Sections 242,
5 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and
6 4501.5 of the Penal Code.
- 7 (C) Use of threats, as specified in, but not limited to, Sections
8 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.
- 9 (D) Sexual abuse, sexual exploitation, or crimes endangering
10 children, as specified in, but not limited to, Sections 266, 266a,
11 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288,
12 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal
13 Code.
- 14 (E) Child abuse or endangerment, as specified in, but not limited
15 to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278
16 of the Penal Code.
- 17 (F) Burglary, robbery, theft, fraud, forgery, or embezzlement,
18 as specified in, but not limited to, Sections 211, 215, 459, 463,
19 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal
20 Code.
- 21 (G) Driving under the influence of alcohol or drugs, but only
22 for a conviction that is a felony.
- 23 (H) Obstruction of justice, as specified in, but not limited to,
24 Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.
- 25 (I) Bribery, as specified in, but not limited to, Sections 67, 67.5,
26 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.
- 27 (J) Escape, as specified in, but not limited to, Sections 107, 109,
28 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal
29 Code.
- 30 (K) Unlawful possession or use of a weapon, firearm, explosive
31 device, or weapon of mass destruction, as specified in, but not
32 limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3,
33 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2,
34 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750,
35 18755 of, and subdivisions (c) and (d) of Section 26100 of the
36 Penal Code.
- 37 (L) Possession of an unlawful deadly weapon, under the Deadly
38 Weapons Recodification Act of 2010 (Part 6 (commencing with
39 Section 16000) of the Penal Code).

- 1 (M) An offense involving the felony possession, sale, distribution,
2 manufacture, or trafficking of controlled substances.
- 3 (N) Vandalism with prior convictions, as specified in, but not
4 limited to, Section 594.7 of the Penal Code.
- 5 (O) Gang-related offenses, as specified in, but not limited to,
6 Sections 186.22, 186.26, and 186.28 of the Penal Code.
- 7 (P) An attempt, as defined in Section 664 of, or a conspiracy,
8 as defined in Section 182 of, the Penal Code, to commit an offense
9 specified in this section.
- 10 (Q) A crime resulting in death, or involving the personal
11 infliction of great bodily injury, as specified in, but not limited to,
12 subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192,
13 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.
- 14 (R) Possession or use of a firearm in the commission of an
15 offense.
- 16 (S) An offense that would require the individual to register as
17 a sex offender pursuant to Section 290, 290.002, or 290.006 of the
18 Penal Code.
- 19 (T) False imprisonment, slavery, and human trafficking, as
20 specified in, but not limited to, Sections 181, 210.5, 236, 236.1,
21 and 4503 of the Penal Code.
- 22 (U) Criminal profiteering and money laundering, as specified
23 in, but not limited to, Sections 186.2, 186.9, and 186.10 of the
24 Penal Code.
- 25 (V) Torture and mayhem, as specified in, but not limited to,
26 Section 203 of the Penal Code.
- 27 (W) A crime threatening the public safety, as specified in, but
28 not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a,
29 451, and 11413 of the Penal Code.
- 30 (X) Elder and dependent adult abuse, as specified in, but not
31 limited to, Section 368 of the Penal Code.
- 32 (Y) A hate crime, as specified in, but not limited to, Section
33 422.55 of the Penal Code.
- 34 (Z) Stalking, as specified in, but not limited to, Section 646.9
35 of the Penal Code.
- 36 (AA) Soliciting the commission of a crime, as specified in, but
37 not limited to, subdivision (c) of Section 286 of, and Sections 653j
38 and 653.23 of, the Penal Code.

1 (AB) An offense committed while on bail or released on his or
2 her own recognizance, as specified in, but not limited to, Section
3 12022.1 of the Penal Code.

4 (AC) Rape, sodomy, oral copulation, or sexual penetration, as
5 specified in, but not limited to, paragraphs (2) and (6) of
6 subdivision (a) of Section 261 of, paragraphs (1) and (4) of
7 subdivision (a) of Section 262 of, Section 264.1 of, subdivisions
8 (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section
9 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal
10 Code.

11 (AD) Kidnapping, as specified in, but not limited to, Sections
12 207, 209, and 209.5 of the Penal Code.

13 (AE) A violation of subdivision (c) of Section 20001 of the
14 Vehicle Code.

15 (4) The individual is a current registrant on the California Sex
16 and Arson Registry.

17 (5) The individual is arrested and taken before a magistrate on
18 a charge involving a serious or violent felony, as identified in
19 subdivision (c) of Section 1192.7 or subdivision (c) of Section
20 667.5 of the Penal Code, a felony punishable by imprisonment in
21 state prison, or any felony listed in paragraph (2) or (3) other than
22 domestic violence, and the magistrate makes a finding of probable
23 cause as to that charge pursuant to Section 872 of the Penal Code.

24 (b) If none of the conditions listed in subdivision (a) is satisfied,
25 an individual shall not be detained on the basis of an immigration
26 hold after the individual becomes eligible for release from custody.

27 SEC. 3. The provisions of this act are severable. If any
28 provision of this act or its application is held invalid, that invalidity
29 shall not affect other provisions or applications that can be given
30 effect without the invalid provision or application.