

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE MAY 14, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1081

Introduced by Assembly Member Ammiano

(Principal coauthor: Senator De León)

**(Coauthors: Assembly Members Alejo, Bonilla, Cedillo, Eng,
Monning, V. Manuel Pérez, Skinner, and Yamada)**

(Coauthors: Senators Calderon, Hancock, and Yee)

February 18, 2011

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 1081, 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 ~~the local agency adopts a plan that meets certain requirements prior to or after compliance with the immigration hold, and,~~ at the time that the individual becomes eligible for release from criminal custody, certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes. 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—and
5 responsibility of federal civil immigration enforcement onto local
6 law enforcement while ~~undercutting community policing strategies.~~
7 To operate the Secure Communities program, ICE relies on
8 ~~immigration detainers. These are~~ voluntary requests, *known as*
9 *ICE holds or detainers*, to local law enforcement to hold
10 individuals *in local jails* for additional time beyond when they
11 would be eligible for release *in a criminal matter*.

12 (b) ~~Immigration detainers are a drain on local resources because~~
13 ~~state~~ *State* and local law enforcement agencies are not reimbursed
14 *by the federal government* for the full cost of responding to a
15 detainer, which can include, but is not limited to, extended
16 detention time and the administrative costs of tracking and
17 responding to detainers. ~~ICE may not mandate the expenditure of~~
18 ~~state and local resources or the use of state and local agencies to~~
19 ~~implement federal programs, such as the Secure Communities~~
20 ~~program.~~

21 (c) ~~Immigration detainers are not~~ *Unlike* criminal detainers:
22 ~~Criminal detainers are,~~ *which are* supported by a warrant and
23 require probable cause. ~~In contrast,~~ there is no requirement for a
24 warrant and no established standard of proof, *such as reasonable*

1 *suspicion* or probable cause, for issuing an ICE detainer request.
2 Immigration detainers have erroneously been placed on United
3 States citizens as well as immigrants who are not deportable.

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

16 ~~(e) Illinois, Massachusetts, New York, Washington, and~~
17 ~~Washington, D.C. have all refused to enter into, suspended, or~~
18 ~~terminated a memorandum of agreement with the United States~~
19 ~~Department of Homeland Security regarding the Secure~~
20 ~~Communities program citing concerns about harm caused to~~
21 ~~community policing, public safety, and protections against racial~~
22 ~~profiling.~~

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

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

29
30 CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED
31 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

32
33 7282. For purposes of this chapter, the following terms have
34 the following meanings:

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

37 ~~(a)~~
38 (b) *“Eligible for release from criminal custody” means that the*
39 *individual may be released from criminal custody because one of*
40 *the following conditions has occurred:*

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

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

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

7 (4) The individual has posted a bond.

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

10 ~~(b)~~

11 (c) "Immigration hold" means an immigration detainer issued
12 by an authorized immigration officer, pursuant to Section 287.7
13 of Title 8 of the Code of Federal Regulations, that requests that
14 the law enforcement official maintain custody of the individual
15 for a period not to exceed 48 hours *excluding Saturdays, Sundays,*
16 *and holidays*, and to advise the authorized immigration officer
17 prior to the release of that individual.

18 ~~(e)~~

19 (d) "Law enforcement official" means any local agency or
20 officer of a local agency authorized to enforce criminal statutes,
21 regulations, or local ordinances or to operate jails or to maintain
22 custody of individuals in jails, and any person or local agency ~~or~~
23 ~~state governmental entity~~ authorized to operate juvenile detention
24 facilities or to maintain custody of individuals in juvenile detention
25 facilities.

26 ~~(d)~~

27 (e) "Local agency" means any city, county, city and county,
28 special district, or other political subdivision of the state.

29 ~~(e)~~

30 (f) "Serious felony" means any of the offenses listed in
31 subdivision (c) of Section 1192.7 of the Penal Code and any offense
32 committed in another state which, if committed in California,
33 would be punishable as a serious felony as defined by subdivision
34 (c) of Section 1192.7 of the Penal Code.

35 ~~(f)~~

36 (g) "Violent felony" means any of the offenses listed in
37 subdivision (c) of Section 667.5 of the Penal Code and any offense
38 committed in another state which, if committed in California,
39 would be punishable as a violent felony as defined by subdivision
40 (c) of Section 667.5 of the Penal Code.

1 7282.5. ~~An individual shall not be detained by a~~ (a) A law
2 enforcement official *has the discretion to detain an individual on*
3 *the basis of an immigration hold after that individual becomes*
4 *eligible for release from criminal custody, unless, at the time the*
5 *individual becomes eligible for release from criminal custody,*
6 ~~both~~ *if both* of the following conditions are satisfied:

7 (a)

8 (1) The individual has been convicted of a serious or violent
9 ~~felony, felony~~ according to a criminal background check or
10 documentation provided to the law enforcement official by United
11 States Immigration and Customs Enforcement *or is currently in*
12 *custody for a charge of a serious or violent felony by a district*
13 *attorney.*

14 (b)

15 (2) The continued detention of the individual on the basis of the
16 immigration hold would not violate any federal, state, or local law,
17 or any local policy.

18 (b) *If either of the conditions set forth in subdivision (a) is not*
19 *satisfied, an individual shall not be detained on the basis of an*
20 *immigration hold after that individual becomes eligible for release*
21 *from criminal custody.*

22 7282.10. ~~(a) The legislative body of the local agency of the~~
23 ~~jurisdiction that the individual is being detained in shall, prior to~~
24 ~~or after complying with an immigration hold, adopt a plan that~~
25 ~~monitors and guards against all of the following:~~

26 (1) ~~A United States citizen being detained pursuant to an~~
27 ~~immigration hold.~~

28 (2) ~~Racial profiling.~~

29 (3) ~~Victims and witnesses to crime being discouraged from~~
30 ~~reporting crimes.~~

31 (b) ~~This plan is a public record for purposes of the California~~
32 ~~Public Records Act (Chapter 3.5 (commencing with Section 6250)~~
33 ~~of Division 7 of Title 1).~~

34 (e) ~~A local agency is not required to adopt a plan pursuant to~~
35 ~~this section prior to complying with an immigration hold pursuant~~
36 ~~to Section 7282.5.~~

37 SEC. 3. The provisions of this act are severable. If any
38 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

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