

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1081

Introduced by Assembly Member Ammiano
(Coauthor: Assembly Member Cedillo)
(Coauthor: Senator 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 law, setting forth the findings and declarations of the Legislature, provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, within the state, and further provides that, for purposes of enforcing specified state laws, a person's immigration status is irrelevant to the issue of liability, and prohibits, in proceedings or discovery undertaken to enforce those state laws, an inquiry into a person's immigration status except where the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

This bill would state the findings and declarations of the Legislature with respect to a memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of

the Immigration and Customs Enforcement’s Secure Communities program, that the Bureau of Criminal Identification and Information within the Department of Justice entered into on ~~May 8~~ April 10, 2009. The bill would require the bureau to modify that agreement, according to specified requirements, or to exercise its authority under the agreement to terminate the agreement.

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. (a) *The Legislature finds and declares all of the*
2 *following:*
3 (1) *Washington, Pennsylvania, and Washington, D.C. have all*
4 *refused to enter into a memorandum of agreement with the United*
5 *States Department of Homeland Security regarding the*
6 *Immigration and Customs Enforcement’s Secure Communities*
7 *program because the program undermines community policing,*
8 *public safety, and protections against racial profiling. Pursuant*
9 *to the program, federal officials have claimed the authority to use*
10 *state and local law enforcement resources for the purpose of*
11 *channeling individuals into federal civil immigration enforcement*
12 *based on minimal contact with law enforcement*
13 (2) *Immigrant residents who are victims or witnesses to crime,*
14 *including domestic violence related crimes, are less likely to report*
15 *the crime or cooperate with law enforcement because any contact*
16 *with law enforcement could result in deportation, without regard*
17 *to whether the arrest or the result of a mistake, or merely a routine*
18 *practice of questioning individuals involved in a dispute without*
19 *pressing charges. Victims or witnesses to crimes may have recourse*
20 *to lawful status (such as U-visas or T-visas) that detention resulting*
21 *from Secure Communities obstructs.*
22 (b) *It is the intent of the Legislature that the Bureau of Criminal*
23 *Identification and Information within the Department of Justice*
24 *modify the memorandum of agreement with the United States*
25 *Department of Homeland Security, regarding the implementation*
26 *of the Immigration and Customs Enforcement’s Secure*
27 *Communities program, it entered into on April 10, 2009, as*
28 *specified in this act, thereby paying respect to the wishes of several*
29 *local jurisdictions that have actively worked for decades to build*

1 *community trust in law enforcement and have expressed concern*
2 *that the Secure Communities program has been deployed without*
3 *adequate notice and without their consultation or consent.*

4 SECTION 1.

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

7
8 CHAPTER 17.1. FEDERAL IMMIGRATION POLICY ENFORCEMENT

9
10 ~~7282. (a) The Legislature finds and declares all of the~~
11 ~~following:~~

12 ~~(1) Both the State of Washington and Washington, D.C., have~~
13 ~~refused to enter into a memorandum of agreement with the United~~
14 ~~States Department of Homeland Security regarding the Immigration~~
15 ~~and Customs Enforcement's Secure Communities program because~~
16 ~~the program undermines community policing and public safety.~~

17 ~~(2) Pursuant to the program, federal officials have claimed the~~
18 ~~authority to enforce federal immigration laws, and in particular,~~
19 ~~the authority to detain individuals based on minimal contact with~~
20 ~~law enforcement.~~

21 ~~(3) Immigrant residents who are victims or witnesses to crime,~~
22 ~~including domestic violence-related crimes, are less likely to report~~
23 ~~the crime or cooperate with law enforcement because any contact~~
24 ~~with law enforcement could result in deportation, without regard~~
25 ~~to whether the arrest was wrongful or the result of a mistake.~~

26 ~~(b) It is the intent of the Legislature that the Bureau of Criminal~~
27 ~~Identification and Information within the Department of Justice~~
28 ~~modify the memorandum of agreement with the United States~~
29 ~~Department of Homeland Security, regarding the implementation~~
30 ~~of the Immigration and Customs Enforcement's Secure~~
31 ~~Communities program, it entered into on May 8, 2009, as specified~~
32 ~~in this act, thereby paying respect to the wishes of local~~
33 ~~jurisdictions, including San Francisco, Santa Clara, and Berkeley,~~
34 ~~which have actively worked for decades to build community trust~~
35 ~~in law enforcement and have expressed concern that the Secure~~
36 ~~Communities program has been deployed without adequate notice~~
37 ~~or consent.~~

38 7282.1.

39 7282. (a) The Bureau of Criminal Identification and
40 Information within the Department of Justice shall modify the

1 memorandum of agreement with the United States Department of
 2 Homeland Security, *which shall be referred to as the modified*
 3 regarding the implementation of the Immigration and Customs
 4 Enforcement’s Secure Communities program, ~~entered into on May~~
 5 ~~8, 2009~~, in accordance with all of the following requirements:

6 (1) The modified agreement shall authorize a local government
 7 to participate in the Secure Communities program only upon the
 8 passage of an ordinance or resolution authorizing participation by
 9 the legislative body of the local government.

10 (2) The modified agreement shall require a local government
 11 ~~that opts to participate in the program, as provided in paragraph~~
 12 ~~(1), to submit to the Bureau of Criminal Identification and~~
 13 ~~Information within the Department of Justice a plan to guard~~
 14 ~~against, and monitor, racial profiling associated with the local~~
 15 ~~government’s participation in the program.~~

16 (3) ~~The modified agreement shall authorize local governments~~
 17 ~~to adopt reasonable exceptions to the implementation of the~~
 18 ~~program with respect to all of the following:~~

19 (A) ~~Protections for domestic violence victims.~~

20 (B) ~~Protections for juveniles: that opts to participate in the~~
 21 ~~program, as provided in paragraph (1), to prepare a plan to~~
 22 ~~monitor and guard against racial profiling, discouraging reporting~~
 23 ~~by domestic violence victims, and harming community policing~~
 24 ~~overall. This plan shall be deemed a public record for purposes~~
 25 ~~of the California Public Records Act (Chapter 3.5 (commencing~~
 26 ~~with Section 6250) of Division 7 of Title 1 of the Government~~
 27 ~~Code). The plan shall include provisions for the monthly release~~
 28 ~~of data that address all of the following topics:~~

29 (A) ~~Stop and arrest data broken down by race, ethnicity,~~
 30 ~~nationality, gender, arresting charge, booking charge, and ultimate~~
 31 ~~disposition of booking charge.~~

32 (B) ~~The number of individuals identified for transfer to~~
 33 ~~Immigration and Customs Enforcement officials through Secure~~
 34 ~~Communities and a break down of the demographics and criminal~~
 35 ~~history of those individuals by race, ethnicity, nationality, gender,~~
 36 ~~booking charge, ultimate disposition of booking charge, Secure~~
 37 ~~Communities offense level, and most serious prior conviction, if~~
 38 ~~any.~~

39 (C) ~~The number of individuals held on Immigration and Customs~~
 40 ~~Enforcement detainees and the length of those detentions.~~

1 (D) Number of 911 calls with victim data broken down by race,
2 ethnicity, and gender.

3 (3) The modified agreement shall include all of the following
4 exemptions and limitations to the Secure Communities program:

5 (A) A requirement that local law enforcement agencies shall
6 not share the fingerprints of domestic violence victims with
7 Immigration and Customs Enforcement officials.

8 (B) A requirement that local law enforcement agencies shall
9 not share the fingerprints of juveniles with Immigration and
10 Customs Enforcement officials.

11 (C) An explicit limitation on the sharing of fingerprints ~~under~~
12 ~~the program to those of~~ with Immigration and Customs
13 Enforcement officials to only those individuals convicted, rather
14 than merely accused, of a crime.

15 (4) The modified agreement shall include, but not be limited
16 to, all of the following safeguards against racial profiling:

17 ~~(A) A prohibition against the use of driver's license checkpoints~~
18 ~~to obtain fingerprints for the purposes of the Secure Communities~~
19 ~~program.~~

20 (A) A prohibition against obtaining fingerprints for the purposes
21 of the Secure Communities program through the use of checkpoints,
22 and the stopping of individuals solely based on perceived
23 immigration status.

24 (B) A requirement that the Immigration and Customs
25 Enforcement establish a complaint ~~mechanism~~ process that allows
26 for expedited review of claims by those put into immigration
27 removal proceedings prior to conviction as a result of the program.

28 (5) The modified agreement shall include a requirement that
29 Immigration and Customs Enforcement make available to the
30 public on its Internet Web site quarterly statistics on the Secure
31 Communities program in this state that include the following metric
32 criteria:

33 (A) Number of searches to IDENT.

34 (B) Number of matches to IDENT data.

35 (C) Number of detainers issued by Immigration and Customs
36 Enforcement based on Level 1, Level 2, and Level 3 offense
37 categories.

38 (D) Number of detainers issued by Immigration and Customs
39 Enforcement where charges are never filed, are later dismissed,
40 or where there is ultimately no conviction.

1 (E) Number of Level 1, Level 2, and Level 3 arrestees who are
2 transferred into Immigration and Customs Enforcement custody
3 after being subjected to an Immigration and Customs Enforcement
4 detainer, where charges are never filed, are later dismissed, or
5 where there is ultimately no conviction.

6 (F) Number of identified detainees prosecuted criminally in
7 federal court.

8 (G) Number of identified detainees removed from the United
9 States.

10 (H) Number of identified United States citizens and persons
11 with lawful status identified through the Secure Communities
12 program.

13 (I) Nationality, age, and gender of individuals identified and
14 removed through the Secure Communities program.

15 (b) If the bureau is unable to fulfill the requirements of
16 subdivision (a), it shall exercise its authority under the agreement
17 to terminate the agreement.