

AMENDED IN SENATE MAY 14, 2012  
AMENDED IN SENATE AUGUST 15, 2011  
AMENDED IN SENATE JUNE 8, 2011  
AMENDED IN ASSEMBLY MAY 16, 2011  
AMENDED IN ASSEMBLY APRIL 15, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1081**

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**Introduced by Assembly Member Ammiano**  
**(Coauthors: Assembly Members *Alejo, Bonilla, Cedillo, Eng,***  
***Monning, and V. Manuel Pérez, Skinner, and Yamada*)**  
**(Coauthors: Senators Calderon, Hancock, and Yee)**

February 18, 2011

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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.*

~~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 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. This bill would state that nothing in this bill is intended to modify the bureau’s existing, established procedures for submitting or exchanging criminal justice information data with the Federal Bureau of Investigation.~~

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:

1 (a) *The United States Immigration and Customs Enforcement's*  
2 *(ICE) Secure Communities program shifts the burden and*  
3 *responsibility of federal civil immigration enforcement onto local*  
4 *law enforcement while undercutting community policing strategies.*  
5 *To operate the Secure Communities program, ICE relies on*  
6 *immigration detainers. These are voluntary requests to local law*  
7 *enforcement to hold individuals for additional time beyond when*  
8 *they would be eligible for release.*

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

17 (c) *Immigration detainers are not criminal detainers. Criminal*  
18 *detainers are supported by a warrant and require probable cause.*  
19 *In contrast, there is no requirement for a warrant and no*  
20 *established standard of proof or probable cause for issuing an*  
21 *ICE detainer request. Immigration detainers have erroneously*  
22 *been placed on United States citizens as well as immigrants who*  
23 *are not deportable.*

24 (d) *The Secure Communities program and immigration detainers*  
25 *harm community policing efforts because immigrant residents who*  
26 *are victims or witnesses to crime, including domestic violence, are*  
27 *less likely to report crime or cooperate with law enforcement when*  
28 *any contact with law enforcement could result in deportation. The*  
29 *program can result in a person being held and transferred into*  
30 *immigration detention without regard to whether the arrest is the*  
31 *result of a mistake, or merely a routine practice of questioning*  
32 *individuals involved in a dispute without pressing charges. Victims*  
33 *or witnesses to crimes may have recourse to lawful status (such*  
34 *as U-visas or T-visas) that detention resulting from the Secure*  
35 *Communities program obstructs.*

36 (†)

37 (e) *Illinois, Massachusetts, New York, Washington,*  
38 *Pennsylvania, and Washington, D.C. have all refused to enter into,*  
39 *suspended, or terminated a memorandum of agreement with the*  
40 *United States Department of Homeland Security regarding the*

1 ~~Immigration and Customs Enforcement’s Secure Communities~~  
 2 ~~program because the program undermines *citing concerns about*~~  
 3 ~~*harm caused* to community policing, public safety, and protections~~  
 4 ~~against racial profiling. Pursuant to the program, federal officials~~  
 5 ~~have claimed the authority to use state and local law enforcement~~  
 6 ~~resources for the purpose of channeling individuals into federal~~  
 7 ~~civil immigration enforcement based on minimal contact with law~~  
 8 ~~enforcement.~~

9 ~~(2) Immigrant residents who are victims or witnesses to crime,~~  
 10 ~~including domestic violence related crimes, are less likely to report~~  
 11 ~~the crime or cooperate with law enforcement because any contact~~  
 12 ~~with law enforcement could result in deportation, without regard~~  
 13 ~~to whether the arrest or the result of a mistake, or merely a routine~~  
 14 ~~practice of questioning individuals involved in a dispute without~~  
 15 ~~pressing charges. Victims or witnesses to crimes may have recourse~~  
 16 ~~to lawful status (such as U-visas or T-visas) that detention resulting~~  
 17 ~~from Secure Communities obstructs.~~

18 ~~(b) It is the intent of the Legislature that the Bureau of Criminal~~  
 19 ~~Identification and Information within the Department of Justice~~  
 20 ~~modify the memorandum of agreement with the United States~~  
 21 ~~Department of Homeland Security, regarding the implementation~~  
 22 ~~of the Immigration and Customs Enforcement’s Secure~~  
 23 ~~Communities program it entered into on April 10, 2009, as~~  
 24 ~~specified in this act, thereby paying respect to the wishes of several~~  
 25 ~~local jurisdictions that have actively worked for decades to build~~  
 26 ~~community trust in law enforcement and have expressed concern~~  
 27 ~~that the Secure Communities program has been deployed without~~  
 28 ~~adequate notice and without their consultation or consent.~~

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

31  
 32 ~~CHAPTER 17.1. FEDERAL IMMIGRATION POLICY ENFORCEMENT~~  
 33

34 ~~7282. (a) The Bureau of Criminal Identification and~~  
 35 ~~Information within the Department of Justice shall modify the~~  
 36 ~~memorandum of agreement with the United States Department of~~  
 37 ~~Homeland Security, which shall be referred to as the modified~~  
 38 ~~agreement, regarding the implementation of the Immigration and~~  
 39 ~~Customs Enforcement’s Secure Communities program in~~  
 40 ~~accordance with all of the following requirements:~~

1 ~~(1) The modified agreement shall authorize a county to~~  
2 ~~participate in the Secure Communities program only upon the~~  
3 ~~legislative body of the county submitting an authorized written~~  
4 ~~request to Immigration and Customs Enforcement's Secure~~  
5 ~~Communities program executive director.~~

6 ~~(2) The modified agreement shall require a county that opts to~~  
7 ~~participate in the program, as provided in paragraph (1), to prepare~~  
8 ~~a plan to monitor and guard against racial profiling, discouraging~~  
9 ~~reporting by domestic violence victims, and harming community~~  
10 ~~policing overall. This plan shall be deemed a public record for~~  
11 ~~purposes of the California Public Records Act (Chapter 3.5~~  
12 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~  
13 ~~Government Code).~~

14 ~~(3) The modified agreement shall include all of the following~~  
15 ~~limitations to the Secure Communities program:~~

16 ~~(A) Protections for crime victims, including, but not limited to,~~  
17 ~~domestic violence victims.~~

18 ~~(B) Protections for juveniles.~~

19 ~~(C) An explicit limitation on the sharing of fingerprints with~~  
20 ~~Immigration and Customs Enforcement officials to only those~~  
21 ~~individuals convicted, rather than merely accused, of a crime.~~

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

24 ~~(A) A prohibition against obtaining fingerprints for the purposes~~  
25 ~~of the Secure Communities program through the use of~~  
26 ~~checkpoints, and the stopping of individuals solely based on~~  
27 ~~perceived immigration status.~~

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

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

37 ~~(A) Number of searches to IDENT.~~

38 ~~(B) Number of matches to IDENT data.~~

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

4 ~~(D) Number of detainers issued by Immigration and Customs~~  
5 ~~Enforcement where charges are never filed, are later dismissed,~~  
6 ~~or where there is ultimately no conviction.~~

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

12 ~~(F) Number of identified detainees prosecuted criminally in~~  
13 ~~federal and state court.~~

14 ~~(G) Number of identified detainees removed from the United~~  
15 ~~States.~~

16 ~~(H) Number of identified United States citizens and persons~~  
17 ~~with lawful status identified through the Secure Communities~~  
18 ~~program.~~

19 ~~(I) Nationality, age, and gender of individuals identified and~~  
20 ~~removed through the Secure Communities program.~~

21 ~~(b) If the bureau is unable to fulfill the requirements of~~  
22 ~~subdivision (a), it shall exercise its authority under the agreement~~  
23 ~~to terminate the agreement.~~

24 ~~(c) Nothing in this section is intended to modify the bureau's~~  
25 ~~existing, established procedures for submitting or exchanging~~  
26 ~~criminal justice information data with the Federal Bureau of~~  
27 ~~Investigation.~~

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

30

31 *CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED*  
32 *STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS*

33

34 *7282. For purposes of this chapter, the following terms have*  
35 *the following meanings:*

36 *(a) "Eligible for release from criminal custody" means that the*  
37 *individual may be released from criminal custody because one of*  
38 *the following conditions has occurred:*

39 *(1) All criminal charges against the individual have been*  
40 *dropped or dismissed.*

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

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

5 (4) *The individual has posted a bond.*

6 (5) *The individual is otherwise eligible for release under state*  
7 *or local law, or local policy.*

8 (b) *“Immigration hold” means an immigration detainer issued*  
9 *by an authorized immigration officer, pursuant to Section 287.7*  
10 *of Title 8 of the Code of Federal Regulations, that requests that*  
11 *the law enforcement official maintain custody of the individual for*  
12 *a period not to exceed 48 hours, and to advise the authorized*  
13 *immigration officer prior to the release of that individual.*

14 (c) *“Law enforcement official” means any local agency or*  
15 *officer of a local agency authorized to enforce criminal statutes,*  
16 *regulations, or local ordinances or to operate jails or to maintain*  
17 *custody of individuals in jails, and any person or local agency or*  
18 *state governmental entity authorized to operate juvenile detention*  
19 *facilities or to maintain custody of individuals in juvenile detention*  
20 *facilities.*

21 (d) *“Local agency” means any city, county, city and county,*  
22 *special district, or other political subdivision of the state.*

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

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

33 7282.5. *An individual shall not be detained by a law*  
34 *enforcement official on the basis of an immigration hold after that*  
35 *individual becomes eligible for release from criminal custody,*  
36 *unless, at the time the individual becomes eligible for release from*  
37 *criminal custody, both of the following conditions are satisfied:*

38 (a) *The individual has been convicted of a serious or violent*  
39 *felony, according to a criminal background check or*

1 *documentation provided to the law enforcement official by United*  
2 *States Immigration and Customs Enforcement.*

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

6 *7282.10. (a) The legislative body of the local agency of the*  
7 *jurisdiction that the individual is being detained in shall, prior to*  
8 *or after complying with an immigration hold, adopt a plan that*  
9 *monitors and guards against all of the following:*

10 *(1) A United States citizen being detained pursuant to an*  
11 *immigration hold.*

12 *(2) Racial profiling.*

13 *(3) Victims and witnesses to crime being discouraged from*  
14 *reporting crimes.*

15 *(b) This plan is a public record for purposes of the California*  
16 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*  
17 *of Division 7 of Title 1).*

18 *(c) A local agency is not required to adopt a plan pursuant to*  
19 *this section prior to complying with an immigration hold pursuant*  
20 *to Section 7282.5.*

21 *SEC. 3. The provisions of this act are severable. If any*  
22 *provision of this act or its application is held invalid, that invalidity*  
23 *shall not affect other provisions or applications that can be given*  
24 *effect without the invalid provision or application.*