

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 introduced, 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.

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 detainees.

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.

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

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

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. STANDARDS FOR RESPONDING TO UNITED
9 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

10
11 7282. For purposes of this chapter, the following terms have
12 the following meanings:

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

15 (b) “Eligible for release from criminal custody” means that the
16 individual may be released from criminal custody because one of
17 the following conditions has occurred:

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

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

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

24 (4) The individual has posted a bond.

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

27 (c) “Immigration hold” means an immigration detainer issued
28 by an authorized immigration officer, pursuant to Section 287.7
29 of Title 8 of the Code of Federal Regulations, that requests that
30 the law enforcement official to maintain custody of the individual
31 for a period not to exceed 48 hours, excluding Saturdays, Sundays,
32 and holidays, and to advise the authorized immigration officer
33 prior to the release of that individual.

34 (d) “Law enforcement official” means any local agency or
35 officer of a local agency authorized to enforce criminal statutes,
36 regulations, or local ordinances or to operate jails or to maintain
37 custody of individuals in jails, and any person or local agency
38 authorized to operate juvenile detention facilities or to maintain
39 custody of individuals in juvenile detention facilities.

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

3 (f) “Serious felony” means any of the offenses listed in
4 subdivision (c) of Section 1192.7 of the Penal Code and any offense
5 committed in another state which, if committed in California,
6 would be punishable as a serious felony as defined by subdivision
7 (c) of Section 1192.7 of the Penal Code.

8 (g) “Violent felony” means any of the offenses listed in
9 subdivision (c) of Section 667.5 of the Penal Code and any offense
10 committed in another state which, if committed in California,
11 would be punishable as a violent felony as defined by subdivision
12 (c) of Section 667.5 of the Penal Code.

13 7282.5. (a) A law enforcement official has the discretion to
14 detain an individual on the basis of an immigration hold after that
15 individual becomes eligible for release from criminal custody,
16 only if both of the following conditions are satisfied:

17 (1) The individual has been convicted of a serious or violent
18 felony according to a criminal background check or documentation
19 provided to the law enforcement official by United States
20 Immigration and Customs Enforcement.

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

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

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