

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.*

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 *citizens*, 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.

1 The program can result in a person being held and transferred into
2 immigration detention without regard to whether the arrest is the
3 result of a mistake, or merely a routine practice of questioning
4 individuals involved in a dispute without pressing charges. Victims
5 or witnesses to crimes may otherwise have recourse to lawful status
6 (such as U-visas or T-visas) that detention resulting from the Secure
7 Communities program obstructs.

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

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

14

15 CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED
16 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

17

18 7282. For purposes of this chapter, the following terms have
19 the following meanings:

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

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

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

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

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

31 (4) The individual has posted a bond.

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

34 (c) “Immigration hold” means an immigration detainer issued
35 by an authorized immigration officer, pursuant to Section 287.7
36 of Title 8 of the Code of Federal Regulations, that requests that
37 the law enforcement official to maintain custody of the individual
38 for a period not to exceed 48 hours, excluding Saturdays, Sundays,
39 and holidays, and to advise the authorized immigration officer
40 prior to the release of that individual.

1 (d) “Administrative warrant” means an immigration warrant
2 issued by ICE, or a successor or similar federal agency charged
3 with enforcement of civil immigration laws, used as a noncriminal,
4 civil warrant for immigration purposes.

5 ~~(d)~~

6 (e) “Law enforcement official” means any local agency or
7 officer of a local agency authorized to enforce criminal statutes,
8 regulations, or local ordinances or to operate jails or to maintain
9 custody of individuals in jails, and any person or local agency
10 authorized to operate juvenile detention facilities or to maintain
11 custody of individuals in juvenile detention facilities.

12 ~~(e)~~

13 (f) “Local agency” means any city, county, city and county,
14 special district, or other political subdivision of the state.

15 ~~(f)~~

16 (g) “Serious felony” means any of the offenses listed in
17 subdivision (c) of Section 1192.7 of the Penal Code and any offense
18 committed in another state which, if committed in California,
19 would be punishable as a serious felony as defined by subdivision
20 (c) of Section 1192.7 of the Penal Code.

21 ~~(g)~~

22 (h) “Violent felony” means any of the offenses listed in
23 subdivision (c) of Section 667.5 of the Penal Code and any offense
24 committed in another state which, if committed in California,
25 would be punishable as a violent felony as defined by subdivision
26 (c) of Section 667.5 of the Penal Code.

27 7282.5. (a) A law enforcement official has the discretion to
28 detain an individual on the basis of an immigration hold after that
29 individual becomes eligible for release from criminal custody,
30 only if both of the following conditions are satisfied:

31 (1) The individual has been convicted of a serious or violent
32 felony *that, if committed in California on January 1, 2013, would*
33 *result in a sentence to state prison*, according to a criminal
34 background check or documentation provided to the law
35 enforcement official by United States Immigration and Customs
36 Enforcement.

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

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

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

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

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