

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 351**

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**Introduced by Assembly Member Donnelly**

February 13, 2013

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An act to add Section 145.5 to the Penal Code, relating to civil liberties, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 351, as amended, Donnelly. Civil liberties: suspension of habeas corpus for American citizens.

The United States Constitution and the California Constitution provide for various civil liberties and other individual rights for a citizen of the United States and the State of California, including the right of habeas corpus, the right to due process, the right to a speedy and public trial, and the right to be informed of criminal charges brought against him or her.

Certain provisions of federal law affirm the authority of the President of the United States to use all necessary and appropriate force to detain specified persons who engaged in terrorist activities.

This bill would enact the California Liberty Preservation Act. The act would ~~provide that an officer, agent, or employee of the United States, or an employee of a corporation providing services to the United States, who enforces or attempts to enforce the provisions of federal law described above would be guilty of a misdemeanor and subject to imprisonment in a county jail for up to one year, or a fine of not more than \$10,000, or both imprisonment and the fine~~ *prohibit an agency in the State of California, a political subdivision of this state, an employee of an agency or a political subdivision of this state, as specified, or a*

*member of the California National Guard, on official state duty, from aiding an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to (1) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (2) the federal law known as the Authorization for Use of Military Force, enacted in 2001, or (3) any other federal law that could lead to the indefinite detention of a person within California, except as specified. The bill would also prohibit the use of state funds and funds allocated by the state to local entities on and after January 1, 2013, to engage in any activity that aids in implementing the NDAA, as specified.*

~~In addition, the bill would provide that a public officer or employee of the state who enforces or attempts to enforce those provisions of federal law would also be guilty of a misdemeanor, but would be subject to imprisonment of up to 6 months, or a fine of up to \$5,000, or both imprisonment and the fine. By creating new crimes, the bill would impose a state-mandated local program.~~

~~The bill would require the Attorney General to report to the Governor and the Legislature any attempt by the federal government to implement these provisions, as specified.~~

~~The bill would also include specified findings and declarations.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes-no*.~~

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 145.5 is added to the Penal Code, to read:
- 2 145.5. (a) This act shall be known as the California Liberty
- 3 Preservation Act.
- 4 (b) The Legislature finds and declares all of the following:
- 5 (1) The Tenth Amendment to the United States Constitution
- 6 authorizes the United States federal government to exercise only

1 those powers specifically delegated to it under ~~Section 8 of Article~~  
2 ~~1 of the United States Constitution.~~

3 (2) The guarantee of the constitutional limitations on federal  
4 power is a matter of contract between the several states, including  
5 the State of California, and the federal government at the time the  
6 United States Constitution was ratified and subsequently amended  
7 by the Bill of Rights.

8 (3) Article VI of United States Constitution, *by using the words*  
9 *“in pursuance thereof,”* provides that the laws of the United States  
10 federal government are the supreme law of the land only if those  
11 laws are adopted in accordance with the powers delegated to the  
12 federal government in the United States Constitution.

13 (4) The President of the United States has asserted that the  
14 *federal law known as the Authorization for the Use of Military*  
15 *Force (Public Law 107-40),* enacted in 2001, authorizes the  
16 President to indefinitely detain, without charge, any person,  
17 including a citizen of the United States or a lawful resident alien,  
18 regardless of whether the person is apprehended inside or outside  
19 the borders of the United States.

20 ~~(5) Sections 1021 and 1022 of the National Defense~~  
21 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81)~~  
22 ~~authorize all of the following:~~

23 ~~(A) Indefinite detention of persons apprehended within the~~  
24 ~~United States without charge or trial.~~

25 ~~(B) Prosecution by military tribunals under the law of war for~~  
26 ~~persons apprehended within the United States.~~

27 ~~(C) Transfer of persons apprehended within the United States~~  
28 ~~to foreign jurisdictions.~~

29 ~~(6) In authorizing the actions described in paragraph (5) of this~~  
30 ~~subdivision, Sections 1021 and 1022 of the National Defense~~  
31 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81) are~~  
32 ~~inimical to the liberty, security, and well-being of the citizens of~~  
33 ~~the State of California by violating all of the following:~~

34 ~~(5) Sections 1021 and 1022 of the National Defense~~  
35 ~~Authorization Act for Fiscal Year 2012 (NDAA) codifies indefinite~~  
36 ~~military detention without charge or trial of civilians captured far~~  
37 ~~from any battlefield, violating the United States Constitution and~~  
38 ~~corroding our nation’s commitment to the rule of law, which~~  
39 ~~generations have fought to preserve.~~

1 (6) *Indefinite detention without trial is inimical to the liberty,*  
2 *security, and well-being of the people of the State of California by*  
3 *violating all of the following:*

4 (A) The California Constitution.

5 (B) The limits of federal power ~~authorized by Section 8 of~~  
6 ~~Article I of~~ *delegated to the federal government in the United*  
7 *States Constitution.*

8 (C) The legal doctrine of posse comitatus under Section 1385  
9 of Title 18 of the United States Code by authorizing the Armed  
10 Forces of the United States to police the United States.

11 (D) The following provisions of the United States Constitution:

12 (i) Clause 2 of Section 9 of Article I, ensuring the right to seek  
13 habeas corpus.

14 (ii) The First Amendment, ensuring the right to petition the  
15 federal government for the redress of grievances.

16 (iii) The Fourth Amendment, ensuring the right to be free from  
17 unreasonable search and seizure.

18 (iv) The Fifth Amendment, requiring capital or infamous crimes  
19 to be brought before a grand jury before charging the defendant  
20 and prohibiting deprivation of life, liberty, or property without due  
21 process of law.

22 (v) The Sixth Amendment, ensuring the right to a speedy trial  
23 by an impartial jury in the state or district where the offense was  
24 alleged to have been committed, the right to be informed of the  
25 nature and cause of accusations and charges levied, the right to  
26 retain legal counsel, and the right to confront witnesses.

27 (vi) The Eighth Amendment, prohibiting excessive bail and  
28 fines and prohibiting cruel and unusual punishment.

29 (vii) The Fourteenth Amendment, prohibiting deprivation of  
30 life, liberty, or property without due process of law.

31 ~~(7) The actions described in paragraph (5) of this subdivision~~  
32 ~~as authorized by Sections 1021 and 1022 of the National Defense~~  
33 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81), and~~  
34 ~~the enforcement of those actions, are illegal within this state.~~

35 ~~(8) Sections 1021 and 1022 of the National Defense~~  
36 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81)~~  
37 ~~violate portions of federal law, the United States Constitution, and~~  
38 ~~the California Constitution and are invalid and illegal in this state.~~

39 (7) *The families of Fred Korematsu, Minoru Yasui, and Gordon*  
40 *Hirabayashi, Japanese Americans incarcerated by the federal*

1 *government in World War II, filed an amicus brief with the United*  
2 *States Court of Appeals for the Second Circuit in Hedges v. Obama,*  
3 *a lawsuit that challenges the constitutionality of the detention*  
4 *provisions of the NDAA arguing that, under the pretense of*  
5 *national security, the NDAA rests on and broadens the legal*  
6 *doctrines on which the United States Supreme Court based the*  
7 *incarceration of Japanese Americans during World War II on the*  
8 *legal cases of Korematsu, Yasui, and Harabayashi, and allows*  
9 *the government to imprison people without any due process rights*  
10 *for an indefinite time.*

11 *(8) The State of California is committed to avoiding a repeat*  
12 *of the tragedies and mistakes of history, including the incarceration*  
13 *and indefinite detention of Japanese Americans by the federal*  
14 *government during World War II.*

15 *(c) (1) Subject to paragraph (2), notwithstanding any law to*  
16 *the contrary, no agency of the State of California, no political*  
17 *subdivision of this state, no employee of an agency, or a political*  
18 *subdivision, of this state acting in his or her official capacity, and*  
19 *no member of the California National Guard on official state duty*  
20 *shall aid an agency of the Armed Forces of the United States in*  
21 *any investigation, prosecution, or detention of a person within*  
22 *California pursuant to (A) Sections 1021 and 1022 of the NDAA,*  
23 *(B) the federal law known as the Authorization for Use of Military*  
24 *Force (Public Law 107-40), enacted in 2001, or (C) any other*  
25 *federal law that could lead to the indefinite detention of a person*  
26 *within California.*

27 *(2) Paragraph (1) does not apply to participation by state or*  
28 *local law enforcement or the California National Guard in a joint*  
29 *task force, partnership, or other similar cooperative agreement*  
30 *with federal law enforcement if that joint task force, partnership,*  
31 *or similar cooperative agreement is not for the purpose of*  
32 *investigating, prosecuting, or detaining any person pursuant to*  
33 *(A) Sections 1021 and 1022 of the NDAA, (B) the federal law*  
34 *known as the Authorization for Use of Military Force, or (C) any*  
35 *other federal law that could lead to the indefinite detention of a*  
36 *person within California.*

37 *(e)*

38 *(d) It is the policy of this state to refuse to provide material*  
39 *support for or to participate in any way with the implementation*  
40 *within this state of Sections 1021 and 1022 of the National Defense*

1 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81). any~~  
2 ~~federal law that purports to authorize indefinite detention of a~~  
3 ~~person within California. Notwithstanding any other law, no local~~  
4 ~~law enforcement agency or local or municipal government, or the~~  
5 ~~employee of that agency or government acting in his or her official~~  
6 ~~capacity, shall use state funds or funds allocated by the state to~~  
7 ~~local entities on or after January 1, 2013, in whole or in part, to~~  
8 ~~engage in any activity that aids an agency of the Armed Forces of~~  
9 ~~the United States in the investigation, arrest, or detention of any~~  
10 ~~person within California or any act that may lead to the indefinite~~  
11 ~~detention of any person within California for purposes of~~  
12 ~~implementing the NDAA.~~

13 ~~(d) (1) An officer, agent, or employee of the United States or~~  
14 ~~an employee of a corporation providing services to the United~~  
15 ~~States who enforces or attempts to enforce Section 1021 or 1022~~  
16 ~~of the National Defense Authorization Act for Fiscal Year 2012~~  
17 ~~(Public Law 112-81) is guilty of a misdemeanor and subject to~~  
18 ~~imprisonment in a county jail for up to one year, a fine of not more~~  
19 ~~than ten thousand dollars (\$10,000), or both imprisonment and the~~  
20 ~~fine.~~

21 ~~(2) A public officer or employee of this state who enforces or~~  
22 ~~attempts to enforce Section 1021 or 1022 of the National Defense~~  
23 ~~Authorization Act for Fiscal Year 2012 (Public Law 112-81) is~~  
24 ~~guilty of a misdemeanor and subject to imprisonment in a county~~  
25 ~~jail for up to 6 months, a fine of not more than five thousand dollars~~  
26 ~~(\$5,000), or both imprisonment and the fine.~~

27 ~~(e) The Attorney General shall report to the Governor and the~~  
28 ~~Legislature any attempt by the federal government to implement~~  
29 ~~Section 1021 or 1022 of the National Defense Authorization Act~~  
30 ~~for Fiscal Year 2012 (Public Law 112-81) through the Attorney~~  
31 ~~General or another state agency.~~

32 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
33 ~~Section 6 of Article XIII B of the California Constitution because~~  
34 ~~the only costs that may be incurred by a local agency or school~~  
35 ~~district will be incurred because this act creates a new crime or~~  
36 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
37 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
38 ~~the Government Code, or changes the definition of a crime within~~  
39 ~~the meaning of Section 6 of Article XIII B of the California~~  
40 ~~Constitution.~~

1 ~~SEC. 3. This act is an urgency statute necessary for the immediate~~  
2 ~~preservation of the public peace, health, or safety within the~~  
3 ~~meaning of Article IV of the Constitution and shall go into~~  
4 ~~immediate effect. The facts constituting the necessity are:~~

5 ~~In order to ensure that the constitutional rights of the citizens of~~  
6 ~~the United States are protected as soon as possible, it is necessary~~  
7 ~~that this act take effect immediately.~~

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