

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 351

Introduced by Assembly Member Donnelly

February 13, 2013

An act to add Section 145.5 to the Penal Code, relating to civil liberties.

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 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 *knowingly* 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, *if the state agency, political subdivision, employee, or member of the California National Guard would violate the United States Constitution, the California Constitution, or any law of this state by providing that aid.* The bill would also prohibit the use of local entities from knowingly using state funds and funds allocated by the state to those local entities on and after January 1, 2013, to engage in any activity that aids in implementing the NDAA an agency of the Armed Forces of the United States in the detention of any person within California for purposes of implementing Sections 1021 and 1022 of the NDAA or the federal law known as the Authorization for Use of Military Force , if that activity would violate the United States Constitution, the California Constitution, or any law of this state, as specified.

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

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. 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
 7 those powers specifically delegated to it under the United States
 8 Constitution.
 9 (2) The guarantee of the constitutional limitations on federal
 10 power is a matter of contract between the several states, including
 11 the State of California, and the federal government at the time the
 12 United States Constitution was ratified and subsequently amended
 13 by the Bill of Rights.
 14 (3) Article VI of United States Constitution, by using the words
 15 “in pursuance thereof,” provides that the laws of the United States
 16 federal government are the supreme law of the land only if those

1 laws are adopted in accordance with the powers delegated to the
2 federal government in the United States Constitution.

3 ~~(4) The President of the United States has asserted that the
4 federal law known as the Authorization for Use of Military Force
5 (Public Law 107-40), enacted in 2001, authorizes the President to
6 indefinitely detain, without charge, any person, including a citizen
7 of the United States or a lawful resident alien, regardless of whether
8 the person is apprehended inside or outside the borders of the
9 United States.~~

10 ~~(5) Sections 1021 and 1022 of the National Defense
11 Authorization Act for Fiscal Year 2012 (NDAA) codifies indefinite
12 military detention without charge or trial of civilians captured far
13 from any battlefield, violating the United States Constitution and
14 corroding our nation's commitment to the rule of law, which
15 generations have fought to preserve.~~

16 ~~(6) Indefinite detention without trial is inimical to the liberty,
17 security, and well-being of the people of the State of California
18 by violating all of the following:~~

19 ~~(A) The California Constitution.~~

20 ~~(B) The limits of federal power delegated to the federal
21 government in the United States Constitution.~~

22 ~~(C) The legal doctrine of posse comitatus under Section 1385
23 of Title 18 of the United States Code by authorizing the Armed
24 Forces of the United States to police the United States.~~

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

26 ~~(i) Clause 2 of Section 9 of Article I, ensuring the right to seek
27 habeas corpus.~~

28 ~~(ii) The First Amendment, ensuring the right to petition the
29 federal government for the redress of grievances.~~

30 ~~(iii) The Fourth Amendment, ensuring the right to be free from
31 unreasonable search and seizure.~~

32 ~~(iv) The Fifth Amendment, requiring capital or infamous crimes
33 to be brought before a grand jury before charging the defendant
34 and prohibiting deprivation of life, liberty, or property without due
35 process of law.~~

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

1 ~~(vi) The Eighth Amendment, prohibiting excessive bail and~~
2 ~~finis and prohibiting cruel and unusual punishment.~~

3 ~~(vii) The Fourteenth Amendment, prohibiting deprivation of~~
4 ~~life, liberty, or property without due process of law.~~

5 ~~(7) The families of Fred Korematsu, Minoru Yasui, and Gordon~~
6 ~~Hirabayashi, Japanese Americans incarcerated by the federal~~
7 ~~government in World War II, filed an amicus brief with the United~~
8 ~~States Court of Appeals for the Second Circuit in Hedges v.~~
9 ~~Obama, a lawsuit that challenges the constitutionality of the~~
10 ~~detention provisions of the NDAA arguing that, under the pretense~~
11 ~~of national security, the NDAA rests on and broadens the legal~~
12 ~~doctrines on which the United States Supreme Court based the~~
13 ~~incarceration of Japanese Americans during World War II on the~~
14 ~~legal cases of Korematsu, Yasui, and Harabayashi, and allows the~~
15 ~~government to imprison people without any due process rights for~~
16 ~~an indefinite time.~~

17 ~~(8) The State of California is committed to avoiding a repeat of~~
18 ~~the tragedies and mistakes of history, including the incarceration~~
19 ~~and indefinite detention of Japanese Americans by the federal~~
20 ~~government during World War II.~~

21 ~~(e)~~

22 ~~145.5. (a) (1) Subject to paragraph (2), notwithstanding any~~
23 ~~law to the contrary, no agency of the State of California, no~~
24 ~~political subdivision of this state, no employee of an agency, or a~~
25 ~~political subdivision, of this state acting in his or her official~~
26 ~~capacity, and no member of the California National Guard on~~
27 ~~official state duty shall knowingly aid an agency of the Armed~~
28 ~~Forces of the United States in any investigation, prosecution, or~~
29 ~~detention of a person within California pursuant to (A) Sections~~
30 ~~1021 and 1022 of the NDAA, National Defense Authorization Act~~
31 ~~for Fiscal Year 2012 (NDAA), (B) the federal law known as the~~
32 ~~Authorization for Use of Military Force (Public Law 107-40),~~
33 ~~enacted in 2001, or (C) any other federal law that could lead to the~~
34 ~~indefinite detention of a person within California, if the state~~
35 ~~agency, political subdivision, employee, or member of the~~
36 ~~California National Guard would violate the United States~~
37 ~~Constitution, the California Constitution, or any law of this state~~
38 ~~by providing that aid.~~

39 ~~(2) Paragraph (1) does not apply to participation by state or~~
40 ~~local law enforcement or the California National Guard in a joint~~

1 task force, partnership, or other similar cooperative agreement
2 with federal law enforcement if that joint task force, partnership,
3 or similar cooperative agreement is not for the purpose of
4 investigating, prosecuting, or detaining any person pursuant to (A)
5 Sections 1021 and 1022 of the NDAA, (B) the federal law known
6 as the Authorization for Use of Military Force (*Public Law*
7 *107-40*), enacted in 2001, or (C) any other federal law that could
8 lead to the indefinite detention of a person within California, if the
9 state agency, political subdivision, employee, or member of the
10 California National Guard would violate the United States
11 Constitution, the California Constitution, or any law of this state
12 by providing that aid.

13 ~~(d)~~

14 (b) It is the policy of this state to refuse to provide material
15 support for or to participate in any way with the implementation
16 within this state of any federal law that purports to authorize
17 indefinite detention of a person within California. Notwithstanding
18 any other law, no local law enforcement agency or local or
19 municipal government, or the employee of that agency or
20 government acting in his or her official capacity, shall *knowingly*
21 use state funds or funds allocated by the state to local entities on
22 or after January 1, 2013, in whole or in part, to engage in any
23 activity that aids an agency of the Armed Forces of the United
24 States in the investigation, arrest, or detention of any person within
25 California or any act that may lead to the indefinite detention of
26 any person within California for purposes of implementing the
27 NDAA Sections 1021 and 1022 of the NDAA or the federal law
28 known as the Authorization for Use of Military Force (*Public Law*
29 *107-40*), enacted in 200 1, if that activity would violate the United
30 States Constitution, the California Constitution, or any law of this
31 state.