

Assembly Bill No. 351

CHAPTER 450

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

[Approved by Governor October 1, 2013. Filed with
Secretary of State October 1, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 351, 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 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, 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 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 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 people of the State of California do enact as follows:

SECTION 1. Section 145.5 is added to the Penal Code, to read:

145.5. (a) (1) Subject to paragraph (2), notwithstanding any law to the contrary, no agency of the State of California, no political subdivision of this state, no employee of an agency, or a political subdivision, of this state acting in his or her official capacity, and no member of the California National Guard on official state duty shall knowingly aid an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to (A) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (B) the federal law known as the Authorization for Use of Military Force (Public Law 107-40), enacted in 2001, or (C) any other federal law, 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.

(2) Paragraph (1) does not apply to participation by state or local law enforcement or the California National Guard in a joint task force, partnership, or other similar cooperative agreement with federal law enforcement if that joint task force, partnership, or similar cooperative agreement is not for the purpose of investigating, prosecuting, or detaining any person pursuant to (A) Sections 1021 and 1022 of the NDAA, (B) the federal law known as the Authorization for Use of Military Force (Public Law 107-40), enacted in 2001, or (C) any other federal law, 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.

(b) It is the policy of this state to refuse to provide material support for or to participate in any way with the implementation within this state of any federal law that purports to authorize indefinite detention of a person within California. Notwithstanding any other law, no local law enforcement agency or local or municipal government, or the employee of that agency or government acting in his or her official capacity, shall knowingly use state funds or funds allocated by the state to local entities on or after January 1, 2013, in whole or in part, to engage in any activity that aids 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 (Public Law 107-40), enacted in 2001, if that activity would violate the United States Constitution, the California Constitution, or any law of this state.