

AMENDED IN ASSEMBLY APRIL 7, 2016  
AMENDED IN ASSEMBLY MARCH 17, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2792**

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**Introduced by Assembly Member Bonta**  
*(Principal coauthor: Assembly Member Alejo)*

February 19, 2016

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An act to add Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2792, as amended, Bonta. Local law enforcement agencies: federal immigration policy enforcement.

Existing federal law authorizes issuance of 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.

Existing law, commonly ~~know~~ known as the TRUST Act, prohibits 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 custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that

the individual has been convicted of specified crimes. Existing law defines specified terms for purposes of these provisions.

This ~~bill~~ bill, the *Transparent Review of Unjust Transfers and Holds (TRUTH) Act*, would authorize a local law enforcement agency to participate in a ~~federal~~ *United States* Immigration and Customs Enforcement (ICE) immigration enforcement program only if it enters into a memorandum of understanding (MOU) with the governing body of the political subdivision in which the law enforcement agency is located that describes the terms and conditions pursuant to which the agency will participate in the immigration enforcement program. The bill would authorize the MOU to take effect 30 days after ratification by the governing body, and would authorize the MOU to be valid for a period not exceeding 2 years. The bill would require the MOU and any records related to its development be public records for purposes of the California Public Records Act. The bill would require the local governing body to hold at least 3 community forums to provide information to the public about the policy under consideration, and to receive and consider public comment before entering into the MOU. The bill would require the MOU to require compliance with the TRUST Act, prohibit law enforcement responses to ICE notification or transfer requests except in those situations in which a law enforcement official would have discretion to detain an individual, requiring compliance with local ordinances or policies that limits law enforcement responses to ICE notifications, or detainer or transfer requests, prohibit execution of an ICE detainer or transfer request and a plan to ensure that ICE does not have access to individuals protected from continued detention on the basis of an immigration hold. By requiring these local agencies to comply with these requirements, this bill would impose a state-mandated local program.

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.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1     SECTION 1. This act shall be known, and may be cited, as the  
2     Transparent Review of Unjust Transfers and Holds (TRUTH) Act.

3     ~~SECTION 1.~~

4     SEC. 2. (a) Transparency and accountability are essential  
5     minimum requirements for any collaboration between state and  
6     federal agencies.

7     (b) Recent immigration enforcement programs sponsored by  
8     the federal United States Immigration and Customs Enforcement  
9     agency (ICE) agency have suffered from a lack of transparency  
10    and accountability.

11    (c) For example, a federal judge found that ICE “went out of  
12    [its] way to mislead the public about Secure Communities,” a  
13    deportation program in which ICE collaborated with local law  
14    enforcement agencies to identify people for deportation.

15    (d) The Legislature further found that Secure Communities  
16    harmed community policing and shifted the burden of federal  
17    immigration enforcement onto local law enforcement agencies.

18    (e) Although ICE has terminated the Secure Communities  
19    program, it continues to promote a number of similar programs,  
20    including the Priority Enforcement Program, the 287(g) Program,  
21    and the Criminal Alien Program.

22    (f) The Priority Enforcement Program has many similarities to  
23    Secure Communities, including the checking of fingerprints for  
24    immigration purposes at the point of arrest; the continued use of  
25    immigration detainers, which have been found by the courts to  
26    pose constitutional concerns; and the reliance on local law  
27    enforcement to assist in immigration enforcement.

28    (g) Just as with Secure Communities, numerous questions have  
29    been raised about whether ICE has been transparent and  
30    accountable with respect to its current deportation programs.

31    (h) This bill seeks to address the lack of transparency and  
32    accountability by ensuring that all ICE deportation programs that  
33    depend on entanglement with local law enforcement agencies in

1 California are subject to meaningful public oversight and meet  
2 certain minimum standards.

3 ~~SEC. 2.~~

4 SEC. 3. Chapter 17.2 (commencing with Section 7283) is added  
5 to Division 7 of Title 1 of the Government Code, to read:

6  
7 CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED  
8 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS  
9

10 7283. For purposes of this chapter, the following terms have  
11 the following meanings:

12 (a) "Detainer request" means a federal Immigration and Customs  
13 Enforcement (ICE) request that a local law enforcement agency  
14 maintain custody of an individual currently in its custody beyond  
15 the time he or she would otherwise be eligible for release in order  
16 to facilitate transfer to ICE and includes, but is not limited to,  
17 Department of Homeland Security (DHS) Form I-247D.

18 (b) "ICE immigration enforcement program" means any program  
19 through which the federal Immigration and Customs Enforcement  
20 (ICE) agency works with local law enforcement agencies to detect,  
21 detain, transfer, or share information about individuals who  
22 allegedly are noncitizens or who have committed civil immigration  
23 violations, or to station ICE agents in local jails, and includes, but  
24 is not limited to, the Priority Enforcement Program, the 287(g)  
25 Program, and the Criminal Alien Program.

26 (c) "Local law enforcement agency" means any agency of a  
27 city, county, city and county, special district, or other political  
28 subdivision of the state that is authorized to enforce criminal  
29 statutes, regulations, or local ordinances; or to operate jails or to  
30 maintain custody of individuals in jails; or to operate juvenile  
31 detention facilities or to maintain custody of individuals in juvenile  
32 detention facilities.

33 (d) "Notification request" means an Immigration and Customs  
34 Enforcement request that a local law enforcement agency inform  
35 ICE of the release date and time of an individual in its custody and  
36 includes, but is not limited to, DHS Form I-247N.

37 (e) "Transfer request" means an Immigration and Customs  
38 Enforcement request that a local law enforcement agency facilitate  
39 the transfer of an individual in its custody to ICE, and includes,  
40 but is not limited to, DHS Form I-247X.

1 7293.1. (a) A local law enforcement agency may participate  
2 in a federal Immigration and Customs Enforcement (ICE)  
3 immigration enforcement program only if the law enforcement  
4 agency and the governing body of the political subdivision in which  
5 the law enforcement agency is located enter into a memorandum  
6 of understanding (MOU) that describes the terms and conditions  
7 pursuant to which the local law enforcement agency will participate  
8 in the immigration enforcement program. The MOU shall only  
9 take effect 30 days after ratification of the MOU by vote of the  
10 governing body of the political subdivision in which the law  
11 enforcement agency is located.

12 (b) The MOU and any records related to the development of  
13 the MOU, including, but not limited to, records of communication  
14 with ICE, shall be public records for purposes of the California  
15 Public Records Act (Chapter 3.5 (commencing with Section 6250)  
16 of Division 7 of Title 1).

17 (c) An MOU enacted under this chapter shall be valid for a  
18 period not exceeding two years. Renewal of an MOU requires  
19 compliance with all of the provision of this chapter, including the  
20 public input process described in subdivision (d) and an evaluation  
21 of whether the conditions described in subdivision (e) have been  
22 fully implemented. An MOU may be renewed for a period not  
23 exceeding two years. An MOU may remain in effect for a period  
24 of not exceeding six months following the two-year period if the  
25 renewal process began at least three months before expiration of  
26 the initial two-year period.

27 (d) Before entering into an MOU, the local governing body shall  
28 hold at least three community forums that are open to the public  
29 on different days, in accessible locations, and with at least 30 days  
30 notice to the public to provide information to the public about the  
31 policy under consideration and to receive and consider public  
32 comment. The community forums shall be held pursuant to the  
33 Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)  
34 of Part 1 of Division 2 of Title 5.)

35 7293.2. (a) An MOU entered into pursuant to this chapter shall  
36 include all of the following:

37 (1) A provision requiring compliance with Sections 7282 and  
38 7282.5, commonly known as the TRUST Act.

39 (2) A prohibition on law enforcement responses to ICE  
40 notification or transfer requests except in those situations in which

1 a law enforcement official would have discretion to detain an  
2 individual on the basis of an immigration hold pursuant to Section  
3 7282.5.

4 (3) A provision requiring compliance with any local ordinance  
5 or policy that limits law enforcement responses to ICE  
6 notifications, or detainer or transfer requests.

7 (4) A prohibition on executing an ICE detainer or transfer  
8 request that does not indicate, in writing, whether the request is  
9 supported by a judicial warrant.

10 (5) A plan to ensure that ICE does not have access to an  
11 individual protected from continued detention under Section  
12 7282.5, including, but not limited to, notification ~~of the presence~~  
13 ~~of the~~ *in advance of the public regarding the release date and time*  
14 *of an* individual in the custody of local law enforcement through  
15 data sharing or otherwise, the ability to interview the individual,  
16 and access to ~~the~~ *nonpublicly available* personal identifying  
17 information, including work or home addresses, of the individual.

18 (b) Unless otherwise prohibited by a local ordinance, law  
19 enforcement policy, or an MOU entered into pursuant to this  
20 chapter, nothing in this chapter shall prohibit a local law  
21 enforcement agency from responding to an ICE notification or  
22 transfer request if a law enforcement official would have discretion  
23 to detain an individual on the basis of an immigration hold pursuant  
24 to Section 7282.5.

25 ~~SEC. 3.~~

26 *SEC. 4.* The Legislature finds and declares that Section 2 of  
27 this act, which adds Chapter 17.2 (commencing with Section 7283)  
28 to Division 7 of Title 1 of the Government Code, furthers, within  
29 the meaning of paragraph (7) of subdivision (b) of Section 3 of  
30 Article I of the California Constitution, the purposes of that  
31 constitutional section as it relates to the right of public access to  
32 the meetings of local public bodies or the writings of local public  
33 officials and local agencies. Pursuant to paragraph (7) of  
34 subdivision (b) of Section 3 of Article I of the California  
35 Constitution, the Legislature makes the following findings:

36 By requiring public meetings relating to the manner in which  
37 local law enforcement entities cooperate with federal authorities  
38 in enforcing federal immigration laws and making related  
39 documents open to public inspection this act furthers the purposes

1 of paragraph (7) of subdivision (b) of Section 3 of Article I of the  
2 California Constitution.

3 ~~SEC. 4.~~

4 *SEC. 5.* No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district under this act would result from a legislative mandate that  
8 is within the scope of paragraph (7) of subdivision (b) of Section  
9 3 of Article I of the California Constitution.

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