

AMENDED IN SENATE JUNE 22, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2792

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

February 19, 2016

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 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, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, would authorize a local law enforcement agency to participate in a 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~~ *located, or the governing body adopts a binding policy directive, as specified*, that describes the terms and conditions pursuant to which the agency will participate in the immigration enforcement program. The bill would authorize the MOU *or policy* to take effect 30 days after ratification by the governing body, and would authorize the MOU *or policy* to be valid for a period not exceeding ~~2~~ *3* years. The bill would require the MOU *or policy* 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~~ *a community forum or forums, as specified*, to provide information to the public about the policy under consideration, and to receive and consider public comment before entering into the ~~MOU~~ *MOU or policy*. The bill would require the MOU *or policy* 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 request~~, a plan to ensure that ICE does not have access to individuals protected from continued detention on the basis of an immigration ~~hold~~ *hold, and a plan to ensure that any individual who is not protected from continued detention is served a copy of any ICE detainer, transfer, or notification request issued for him or her, as specified*. By requiring these local agencies to comply with these requirements, this bill would impose a state-mandated local program. *The bill would also prohibit police and security departments of the California State University, community colleges, schools, and school districts from participating in any ICE immigration enforcement 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 SEC. 2. (a) Transparency and accountability are essential
4 minimum requirements for any collaboration between state and
5 federal agencies.
6 (b) Recent immigration enforcement programs sponsored by
7 the United States Immigration and Customs Enforcement (ICE)
8 agency have suffered from a lack of transparency and
9 accountability.
10 (c) For example, a federal judge found that ICE “went out of
11 [its] way to mislead the public about Secure Communities,” a
12 deportation program in which ICE collaborated with local law
13 enforcement agencies to identify people for deportation.
14 (d) The Legislature further found that Secure Communities
15 harmed community policing and shifted the burden of federal
16 immigration enforcement onto local law enforcement agencies.
17 (e) Although ICE has terminated the Secure Communities
18 program, it continues to promote a number of similar programs,
19 including the Priority Enforcement Program, the 287(g) Program,
20 and the Criminal Alien Program.
21 (f) The Priority Enforcement Program has many similarities to
22 Secure Communities, including the checking of fingerprints for
23 immigration purposes at the point of arrest; the continued use of

1 immigration detainers, which have been found by the courts to
 2 pose constitutional concerns; and the reliance on local law
 3 enforcement to assist in immigration enforcement.

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

7 (h) This bill seeks to address the lack of transparency and
 8 accountability by ensuring that all ICE deportation programs that
 9 depend on entanglement with local law enforcement agencies in
 10 California are subject to meaningful public oversight and meet
 11 certain minimum standards.

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

14
 15 CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED
 16 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS
 17

18 7283. For purposes of this chapter, the following terms have
 19 the following meanings:

20 (a) *“Community forum” includes, but is not limited to, any*
 21 *regular meeting of the local governing body that is open to the*
 22 *public, where the public may provide comment, is in an accessible*
 23 *location, and is noticed at least 30 days in advance.*

24 (a)
 25 (b) *“Detainer request” means a federal Immigration and Customs*
 26 *Enforcement (ICE) request that a local law enforcement agency*
 27 *maintain custody of an individual currently in its custody beyond*
 28 *the time he or she would otherwise be eligible for release in order*
 29 *to facilitate transfer to ICE and includes, but is not limited to,*
 30 *Department of Homeland Security (DHS) Form I-247D.*

31 (c) *“Governing body” with respect to a county, means the*
 32 *county board of supervisors.*

33 (b)
 34 (d) *“ICE immigration enforcement program” means any program*
 35 *through or practice by which the federal United States Immigration*
 36 *and Customs Enforcement (ICE) agency works with local law*
 37 *enforcement agencies, or police and security departments*
 38 *of the University of California, California State University,*
 39 *community colleges, schools, and school districts to detect, detain,*
 40 *transfer, or share information about individuals who allegedly are*

1 noncitizens or who have committed civil immigration violations,
2 or to station ICE agents in local jails, *or to interview individuals*
3 *in local jails about alleged civil immigration violations, or to issue*
4 *or respond to detainer, notification, or transfer requests*, and
5 includes, but is not limited to, the Priority Enforcement Program,
6 the 287(g) Program, and the Criminal Alien Program.

7 (e)

8 (e) “Local law enforcement agency” means any agency of a
9 city, county, city and county, special district, or other political
10 subdivision of the state that is authorized to enforce criminal
11 statutes, regulations, or local ordinances; or to operate jails or to
12 maintain custody of individuals in jails; or to operate juvenile
13 detention facilities or to maintain custody of individuals in juvenile
14 detention facilities.

15 (f)

16 (f) “Notification request” means an Immigration and Customs
17 Enforcement request that a local law enforcement agency inform
18 ICE of the release date and time of an individual in its custody and
19 includes, but is not limited to, DHS Form I-247N.

20 (g) “Small city” means a city with a population of 100,000 or
21 less, as determined by the annual city total population rankings
22 by the Demographic Research Unit of the Department of Finance.

23 (h)

24 (h) “Transfer request” means an Immigration and Customs
25 Enforcement request that a local law enforcement agency facilitate
26 the transfer of an individual in its custody to ICE, and includes,
27 but is not limited to, DHS Form I-247X.

28 7293.1. (a) A local law enforcement agency may participate
29 ~~in a federal Immigration and Customs Enforcement (ICE)~~ *an ICE*
30 immigration enforcement program only if the law enforcement
31 agency and the governing body of the political subdivision in which
32 the law enforcement agency is located enter into a memorandum
33 of understanding (MOU) *in the case of a local law enforcement*
34 *agency headed by an elected official, or the governing body adopts*
35 *a binding policy directive, in the case of a local law enforcement*
36 *agency headed by an employee of the political subdivision hired*
37 *and fired by the governing body*, that describes the terms and
38 conditions pursuant to which the local law enforcement agency
39 will participate in the immigration enforcement program. The
40 MOU *or policy* shall only take effect 30 days after ratification of

1 the MOU *or policy* by vote of the governing body of the political
2 subdivision in which the law enforcement agency is located.

3 (b) The MOU *or policy* and any records related to the
4 development of the ~~MOU~~, *MOU or policy*, including, but not
5 limited to, records of communication with ICE, shall be public
6 records for purposes of the California Public Records Act (Chapter
7 3.5 (commencing with Section 6250) of Division 7 of Title 1).

8 (c) An MOU *or policy* enacted under this chapter shall be valid
9 for a period not exceeding ~~two~~ *three* years. Renewal of an MOU
10 *or policy* requires compliance with all of the provision of this
11 chapter, including the public input process described in subdivision
12 (d) and an evaluation of whether the conditions described in
13 subdivision (e) have been fully implemented. An MOU *or policy*
14 may be renewed for a period not exceeding ~~two~~ *three* years. An
15 MOU *or policy* may remain in effect for a period not exceeding
16 six months following the two-year period if the renewal process
17 began at least three months before expiration of the initial ~~two-year~~
18 *three-year* period.

19 (d) Before entering into an ~~MOU~~, *MOU or policy*, the local
20 governing body shall hold at least three community forums that
21 are open to the public on different days, in accessible locations,
22 and with at least 30 days notice to the public to provide information
23 to the public about the policy under consideration and to receive
24 and consider public ~~comment~~. *comment, except that the local*
25 *governing body of a small city shall be required to hold only one*
26 *forum*. The community forums shall be held pursuant to the Ralph
27 M. Brown Act (Chapter 9 (commencing with Section 54950) of
28 Part 1 of Division 2 of Title ~~5~~) 5).

29 (e) An MOU *or policy* enacted under this chapter shall be
30 incorporated into any contract for the operation of a
31 government-owned detention facility entered into by a local law
32 enforcement agency or the governing body of the political
33 subdivision in which the law enforcement agency is located.

34 7293.2. (a) An MOU *or policy* entered into pursuant to this
35 chapter shall include all of the following:

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

38 (2) A prohibition on law enforcement responses to ICE
39 notification or transfer requests except in those situations in which
40 a law enforcement official would have discretion to detain an

1 individual on the basis of an immigration hold pursuant to Section
2 7282.5.

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

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

9 (5)

10 (4) 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 in advance of
13 the public regarding the release date and time of an individual in
14 the custody of local law enforcement *that the individual is being*
15 *or will be released at a certain date and time* through data sharing
16 or otherwise, the ability to interview the individual, and access to
17 nonpublicly available personal identifying information, including
18 work or home addresses, of the individual.

19 (5) *A plan to ensure that any individual not protected from*
20 *continued detention under Section 7282.5 is served with a copy of*
21 *any ICE detainer, transfer, or notification request issued for him*
22 *or her and is provided a written consent form in advance of any*
23 *interview with ICE that explains the purpose of the interview, that*
24 *the interview is voluntary, and that he or she may decline to be*
25 *interviewed or may choose to be interviewed only with his or her*
26 *attorney present.*

27 (b) Unless otherwise prohibited by a local ordinance, law
28 enforcement policy, or an MOU *or policy* entered into pursuant
29 to this chapter, nothing in this chapter shall prohibit a local law
30 enforcement agency from responding to an ICE notification or
31 transfer request if a law enforcement official would have discretion
32 to detain an individual on the basis of an immigration hold pursuant
33 to Section 7282.5.

34 7293.3. (a) *Notwithstanding any other provision of this*
35 *chapter, police and security departments of the California State*
36 *University, California Community Colleges, schools, and school*
37 *districts shall not participate in any ICE immigration enforcement*
38 *program.*

39 (b) *The University of California is requested to comply with*
40 *this section.*

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

11 By requiring public meetings relating to the manner in which
12 local law enforcement entities cooperate with federal authorities
13 in enforcing federal immigration laws and making related
14 documents open to public inspection this act furthers the purposes
15 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
16 California Constitution.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district under this act would result from a legislative mandate that
21 is within the scope of paragraph (7) of subdivision (b) of Section
22 3 of Article I of the California Constitution.