

AMENDED IN SENATE AUGUST 15, 2016
AMENDED IN SENATE AUGUST 3, 2016
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AMENDED IN ASSEMBLY APRIL 7, 2016
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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2792

Introduced by Assembly Member Bonta
(Principal coauthor: Assembly Member Alejo)
(Principal coauthor: Senator Leno)
(Coauthor: Assembly Member Lopez)

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: ICE access.

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 provide the United States Immigration and Customs Enforcement (ICE) with access to an individual if certain conditions are met, as provided. The bill would require that the records related to ICE access be public records for purposes of the California Public Records Act. ~~The bill, commencing January 1, 2018, would require the local governing body to hold 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 or policy of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year, to hold at least one public community forum during the following year, as specified, to provide information to the public about ICE's access to individuals and to receive and consider public comment. The bill would require the MOU or ICE access, which shall~~ *community forum* to include a report by the local law enforcement agency about its policies and practices regarding ICE access to ~~individuals~~ *individuals and compliance with the TRUTH act*. 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 providing ICE access to any individual.

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

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

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

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

11
12 CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED
13 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS
14

15 7283. For purposes of this chapter, the following terms have
16 the following meanings:

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

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

27 (c) "Governing body" with respect to a county, means the county
28 board of supervisors.

29 (d) "ICE access" means, for the purposes of civil immigration
30 enforcement, including when an individual is stopped with or
31 without their consent, arrested, detained, or otherwise under the
32 control of the local law enforcement agency, all of the following:

33 (1) Responding to an ICE hold, notification, or transfer request.

34 (2) Providing notification to ICE in advance of the public that
35 an individual is being or will be released at a certain date and time
36 through data sharing or otherwise.

37 (3) Providing ICE non-publicly available information or access
38 to non-publicly available computer databases and jail logs
39 containing regarding release dates, home addresses, or work

1 ~~addresses.~~ *addresses, whether through computer databases, jail*
2 *logs, or otherwise.*

3 (4) Allowing ICE to interview an individual.

4 (5) Providing ICE information regarding dates and times of
5 probation or parole check-ins.

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

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

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

23 7283.1. (a) A local law enforcement agency shall have the
24 discretion to provide ICE access to an individual if all of the
25 following conditions are met:

26 (1) The agency would have discretion to detain the individual
27 on the basis of an immigration hold request pursuant to Section
28 7282.5.

29 (2) The agency would not violate any local law or policy by
30 providing access to the individual.

31 (3) The individual has been served with a copy of any ICE hold,
32 transfer, or notification request issued for him or her and has been
33 provided with a written consent form in advance of any interview
34 with ICE that explains the purpose of the interview, that the
35 interview is voluntary, and that he or she may decline to be
36 interviewed or may choose to be interviewed only with his or her
37 attorney present.

38 (b) If a local law enforcement agency provides ICE with
39 notification that an individual is being, or will be, released on a
40 certain date, the local law enforcement agency shall promptly

1 provide the same notification in writing to the individual and to
2 his or her attorney or to one additional person who the individual
3 shall be permitted to designate.

4 (c) All records relating to ICE access provided by local law
5 enforcement agencies, including all communication with ICE about
6 that access shall be public records for purposes of the California
7 Public Records Act, *Act (Chapter 3.5 (commencing with Section*
8 *6250))*, except that, where otherwise permitted under the Public
9 Records Act, personal identifying information may be redacted
10 prior to public disclosure.

11 (d) ~~The~~ *Beginning January 1, 2018, the* local governing body
12 of any county, city, or city and county in which a local law
13 enforcement agency has provided ICE access to an individual
14 during the last year shall hold at least one community forum ~~every~~
15 ~~year~~ *during the following year*, that is open to the public, in an
16 accessible location, and with at least 30 days' notice to provide
17 information to the public about ICE's access to individuals and to
18 receive and consider public comment. At the community forum,
19 the local law enforcement agency shall report to the local governing
20 body about its policies and practices regarding ICE access to
21 individuals and its compliance with this chapter. As part of this
22 report, the local law enforcement agency shall provide the
23 governing body with any and all data it maintains regarding the
24 number and demographic characteristics of individuals to whom
25 the agency has provided ICE access, the date ICE access was
26 provided, and whether the ICE access was provided through a
27 hold, transfer, or notification request or through other means.

28 7283.2. Nothing in this chapter shall be construed to provide,
29 expand, or ratify the legal authority of any state or local law
30 enforcement agency to detain an individual based upon an ICE
31 hold request.

32 7283.3. (a) Notwithstanding any other provision of this chapter,
33 police and security departments of the California State University,
34 California Community Colleges, schools, and school districts shall
35 not provide ICE access to any individual.

36 (b) The University of California is requested to comply with
37 this section.

38 SEC. 4. The Legislature finds and declares that Section ~~2 3~~ of
39 this act, which adds Chapter 17.2 (commencing with Section 7283)
40 to Division 7 of Title 1 of the Government Code, furthers, within

1 the meaning of paragraph (7) of subdivision (b) of Section 3 of
2 Article I of the California Constitution, the purposes of that
3 constitutional section as it relates to the right of public access to
4 the meetings of local public bodies or the writings of local public
5 officials and local agencies. Pursuant to paragraph (7) of
6 subdivision (b) of Section 3 of Article I of the California
7 Constitution, the Legislature makes the following findings:

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

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