

**Introduced by Senator Nielsen**February 27, 2015

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An act to amend Section 7282.5 of the Government Code, relating to state government.

## LEGISLATIVE COUNSEL'S DIGEST

SB 713, as introduced, Nielsen. State government: federal immigration policy enforcement.

Existing federal law authorizes any authorized immigration officer to issue 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 state law 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 at any time of a felony for specified offenses and the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy.

This bill would expand the list of prior felony convictions to include the conviction of a felony which formed the basis upon which the individual was previously deported, thereby allowing a law enforcement

official, if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, to detain an individual with that felony conviction on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 7282.5 of the Government Code is  
2 amended to read:

3 7282.5. (a) A law enforcement official shall have discretion  
4 to cooperate with federal immigration officials by detaining an  
5 individual on the basis of an immigration hold after that individual  
6 becomes eligible for release from custody only if the continued  
7 detention of the individual on the basis of the immigration hold  
8 would not violate any federal, state, or local law, or any local  
9 policy, and only under any of the following circumstances:

10 (1) The individual has been convicted of a serious or violent  
11 felony identified in subdivision (c) of Section 1192.7 of, or  
12 subdivision (c) of Section 667.5 of, the Penal Code.

13 (2) The individual has been convicted of a felony punishable  
14 by imprisonment in the state prison.

15 (3) The individual has been convicted within the past five years  
16 of a misdemeanor for a crime that is punishable as either a  
17 misdemeanor or a felony for, or has been convicted at any time of  
18 a felony for, any of the following offenses:

19 (A) Assault, as specified in, but not limited to, Sections 217.1,  
20 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5,  
21 4500, and 4501 of the Penal Code.

22 (B) Battery, as specified in, but not limited to, Sections 242,  
23 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and  
24 4501.5 of the Penal Code.

25 (C) Use of threats, as specified in, but not limited to, Sections  
26 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

27 (D) Sexual abuse, sexual exploitation, or crimes endangering  
28 children, as specified in, but not limited to, Sections 266, 266a,  
29 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288,

1 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal  
2 Code.

3 (E) Child abuse or endangerment, as specified in, but not limited  
4 to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of  
5 the Penal Code.

6 (F) Burglary, robbery, theft, fraud, forgery, or embezzlement,  
7 as specified in, but not limited to, Sections 211, 215, 459, 463,  
8 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal  
9 Code.

10 (G) Driving under the influence of alcohol or drugs, but only  
11 for a conviction that is a felony.

12 (H) Obstruction of justice, as specified in, but not limited to,  
13 Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

14 (I) Bribery, as specified in, but not limited to, Sections 67, 67.5,  
15 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

16 (J) Escape, as specified in, but not limited to, Sections 107, 109,  
17 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal  
18 Code.

19 (K) Unlawful possession or use of a weapon, firearm, explosive  
20 device, or weapon of mass destruction, as specified in, but not  
21 limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3,  
22 417.6, 417.8, 4574, 11418, 11418.1, 12021.5, 12022, 12022.2,  
23 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 18745, 18750,  
24 and 18755 of, and subdivisions (c) and (d) of Section 26100 of,  
25 the Penal Code.

26 (L) Possession of an unlawful deadly weapon, under the Deadly  
27 Weapons Recodification Act of 2010 (Part 6 (commencing with  
28 Section 16000) of the Penal Code).

29 (M) An offense involving the felony possession, sale,  
30 distribution, manufacture, or trafficking of controlled substances.

31 (N) Vandalism with prior convictions, as specified in, but not  
32 limited to, Section 594.7 of the Penal Code.

33 (O) Gang-related offenses, as specified in, but not limited to,  
34 Sections 186.22, 186.26, and 186.28 of the Penal Code.

35 (P) An attempt, as defined in Section 664 of, or a conspiracy,  
36 as defined in Section 182 of, the Penal Code, to commit an offense  
37 specified in this section.

38 (Q) A crime resulting in death, or involving the personal  
39 infliction of great bodily injury, as specified in, but not limited to,

1 subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192,  
2 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

3 (R) Possession or use of a firearm in the commission of an  
4 offense.

5 (S) An offense that would require the individual to register as  
6 a sex offender pursuant to Section 290, 290.002, or 290.006 of the  
7 Penal Code.

8 (T) False imprisonment, slavery, and human trafficking, as  
9 specified in, but not limited to, Sections 181, 210.5, 236, 236.1,  
10 and 4503 of the Penal Code.

11 (U) Criminal profiteering and money laundering, as specified  
12 in, but not limited to, Sections 186.2, 186.9, and 186.10 of the  
13 Penal Code.

14 (V) Torture and mayhem, as specified in, but not limited to,  
15 Section 203 of the Penal Code.

16 (W) A crime threatening the public safety, as specified in, but  
17 not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a,  
18 451, and 11413 of the Penal Code.

19 (X) Elder and dependent adult abuse, as specified in, but not  
20 limited to, Section 368 of the Penal Code.

21 (Y) A hate crime, as specified in, but not limited to, Section  
22 422.55 of the Penal Code.

23 (Z) Stalking, as specified in, but not limited to, Section 646.9  
24 of the Penal Code.

25 (AA) Soliciting the commission of a crime, as specified in, but  
26 not limited to, subdivision (c) of Section 286 of, and Sections 653j  
27 and 653.23 of, the Penal Code.

28 (AB) An offense committed while on bail or released on his or  
29 her own recognizance, as specified in, but not limited to, Section  
30 12022.1 of the Penal Code.

31 (AC) Rape, sodomy, oral copulation, or sexual penetration, as  
32 specified in, but not limited to, paragraphs (2) and (6) of  
33 subdivision (a) of Section 261 of, paragraphs (1) and (4) of  
34 subdivision (a) of Section 262 of, Section 264.1 of, subdivisions  
35 (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section  
36 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal  
37 Code.

38 (AD) Kidnapping, as specified in, but not limited to, Sections  
39 207, 209, and 209.5 of the Penal Code.

1 (AE) A violation of subdivision (c) of Section 20001 of the  
2 Vehicle Code.

3 (AF) *A felony which formed the basis upon which the individual*  
4 *was previously deported.*

5 (4) The individual is a current registrant on the California Sex  
6 and Arson Registry.

7 (5) The individual is arrested and taken before a magistrate on  
8 a charge involving a serious or violent felony, as identified in  
9 subdivision (c) of Section 1192.7 or subdivision (c) of Section  
10 667.5 of the Penal Code, a felony punishable by imprisonment in  
11 state prison, or any felony listed in paragraph (2) or (3) other than  
12 domestic violence, and the magistrate makes a finding of probable  
13 cause as to that charge pursuant to Section 872 of the Penal Code.

14 (6) The individual has been convicted of a federal crime that  
15 meets the definition of an aggravated felony as set forth in  
16 subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection  
17 (a) of Section 101 of the federal Immigration and Nationality Act  
18 (8 U.S.C. Sec. 1101), or is identified by the United States  
19 Department of Homeland Security's Immigration and Customs  
20 Enforcement as the subject of an outstanding federal felony arrest  
21 warrant.

22 (b) If none of the conditions listed in subdivision (a) is satisfied,  
23 an individual shall not be detained on the basis of an immigration  
24 hold after the individual becomes eligible for release from custody.