

Assembly Bill No. 1081

Passed the Assembly August 24, 2012

Chief Clerk of the Assembly

Passed the Senate August 21, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title 1 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1081, Ammiano. 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.

This bill would prohibit 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 criminal custody, unless, at the time that the individual becomes eligible for release from criminal custody, certain conditions are met.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States Immigration and Customs Enforcement's (ICE) Secure Communities program shifts the burden of federal civil immigration enforcement onto local law enforcement. To operate the Secure Communities program, ICE relies on voluntary requests, known as ICE holds or detainers, to local law enforcement to hold individuals in local jails for additional time beyond when they would be eligible for release in a criminal matter.

(b) State and local law enforcement agencies are not reimbursed by the federal government for the full cost of responding to a

detainer, which can include, but is not limited to, extended detention time and the administrative costs of tracking and responding to detainers.

(c) Unlike criminal detainers, which are supported by a warrant and require probable cause, there is no requirement for a warrant and no established standard of proof, such as reasonable suspicion or probable cause, for issuing an ICE detainer request. Immigration detainers have erroneously been placed on United States citizens as well as immigrants who are not deportable.

(d) The Secure Communities program and immigration detainers harm community policing efforts because immigrant residents who are victims or witnesses to crime, including domestic violence, are less likely to report crime or cooperate with law enforcement when any contact with law enforcement could result in deportation. The program can result in a person being held and transferred into immigration detention without regard to whether the arrest is the result of a mistake, or merely a routine practice of questioning individuals involved in a dispute without pressing charges. Victims or witnesses to crimes may have recourse to lawful status (such as U-visas or T-visas) that detention resulting from the Secure Communities program obstructs.

(e) It is the intent of the Legislature that this act shall not be construed as providing, expanding, or ratifying the legal authority for any state or local law enforcement agency to detain an individual on an immigration hold.

SEC. 2. Chapter 17.1 (commencing with Section 7282) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.1. STANDARDS FOR RESPONDING TO UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT HOLDS

7282. For purposes of this chapter, the following terms have the following meanings:

(a) “Conviction” shall have the same meaning as subdivision (d) of Section 667 of the Penal Code.

(b) “Eligible for release from criminal custody” means that the individual may be released from criminal custody because one of the following conditions has occurred:

(1) All criminal charges against the individual have been dropped or dismissed.

(2) The individual has been acquitted of all criminal charges filed against him or her.

(3) The individual has served all the time required for his or her sentence.

(4) The individual has posted a bond.

(5) The individual is otherwise eligible for release under state or local law, or local policy.

(c) “Immigration hold” means an immigration detainer issued by an authorized immigration officer, pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, that requests that the law enforcement official maintain custody of the individual for a period not to exceed 48 hours excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual.

(d) “Law enforcement official” means any local agency or officer of a local agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or to maintain custody of individuals in jails, and any person or local agency authorized to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities.

(e) “Local agency” means any city, county, city and county, special district, or other political subdivision of the state.

(f) “Serious felony” means any of the offenses listed in subdivision (c) of Section 1192.7 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code.

(g) “Violent felony” means any of the offenses listed in subdivision (c) of Section 667.5 of the Penal Code and any offense committed in another state which, if committed in California, would be punishable as a violent felony as defined by subdivision (c) of Section 667.5 of the Penal Code.

7282.5. (a) A law enforcement official has the discretion to detain an individual on the basis of an immigration hold after that individual becomes eligible for release from criminal custody, if both of the following conditions are satisfied:

(1) The individual has been convicted of a serious or violent felony according to a criminal background check or documentation provided to the law enforcement official by United States

Immigration and Customs Enforcement or is currently in custody for a charge of a serious or violent felony by a district attorney.

(2) 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.

(b) If either of the conditions set forth in subdivision (a) is not satisfied, an individual shall not be detained on the basis of an immigration hold after that individual becomes eligible for release from criminal custody.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Approved _____, 2012

Governor