
Public Safety Committee

HB 1874

Brief Description: Addressing federal immigration policy enforcement.

Sponsors: Representatives Moscoso, Jinkins, Appleton, Roberts, Reykdal, Hunt, Ryu, Pollet and Farrell.

Brief Summary of Bill

- Prohibits law enforcement officers from detaining an individual on the basis of an immigration detainer unless he or she was previously convicted of a most serious offense or violent offense.
- Prohibits state or local law enforcement officers from arresting or detaining an individual based on an administrative immigration warrant.
- Prohibits law enforcement officers from making an individual available for interview by a United States immigration enforcement agent, unless the individual has signed a written consent indicating knowledge of who the interviewer is and the possible legal consequences of providing information to such an agent.

Hearing Date: 2/21/13

Staff: Sarah Koster (786-7303).

Background:

An immigration detainer is described in section 287.7 of Title 8 of the Code of Federal Regulations as a request from the United States Immigrations and Customs Enforcement agency (ICE), within the Department of Homeland Security (Department), to a federal, state or local law enforcement agency that the agency notify the Department before releasing a certain person in their custody, so as to allow the Department to assume custody for the purposes of arrest and removal.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Detainers may be issued by border patrol agents, special agents, deportation officers, immigration inspectors, immigration enforcement agents, adjudications officers, or supervisory personnel.

Section 287.7 also states that when a detainer is issued for a person not otherwise detained, a state or local criminal justice agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, in order to allow the Department to assume custody.

"Violent offense" means any class A felony, an attempt to commit a class A felony, and any of the following offenses:

- Criminal solicitation of or criminal conspiracy to commit a class A felony;
- Manslaughter in the first degree;
- Manslaughter in the second degree;
- Indecent liberties if committed by forcible compulsion;
- Kidnapping in the second degree;
- Arson in the second degree;
- Assault in the second degree;
- Assault of a Child in the second degree;
- Extortion in the first degree;
- Robbery in the second degree;
- Drive-by shooting;
- Vehicular Assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; or
- Vehicular Homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug or by the operation of any vehicle in a reckless manner.

"Most serious offense" includes all class A felonies and several of the offenses included under "violent offense," as well as:

- Child Molestation in the second degree;
- Controlled Substance Homicide;
- Incest, when committed against a child under 14 years of age;
- Indecent Liberties (whether or not committed by forcible compulsion);
- Leading Organized Crime;
- Promoting Prostitution in the first degree;
- Rape in the third degree;
- Sexual Exploitation;
- any other class B felony with a finding of sexual motivation; or
- any other felony with a deadly weapon verdict.

Summary of Bill:

If a person is otherwise eligible for release from criminal custody, law enforcement officers are prohibited from detaining the person on the basis of an immigration detainer, unless a background check reveals that the person has previously been convicted of a violent or most serious offense.

The state, local governments, and their officers and employees are immune from civil liability for damages from failure to comply with an immigration detainer, except upon proof of willful or wanton misconduct.

No state or local law enforcement officer shall arrest or detain an individual based on an administrative immigration warrant in the National Crime Information Center database of the Federal Bureau of Investigation.

No state or local law enforcement officer may make a person in their custody available for interview by any employee or agent of the United States ICE or the United States Border Patrol (Border Patrol), unless the person:

- is provided an opportunity to have counsel present; and
- signs a written consent form that indicates knowledge of who the interviewer is and the possible legal consequences of providing information to any employee or agent of ICE or the Border Patrol.

Appropriation: None.

Fiscal Note: Requested on February 17, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.