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## Public Safety Committee

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### HB 1716

**Brief Description:** Addressing state and local enforcement of federal immigration detainers and administrative warrants.

**Sponsors:** Representatives Moscoso, Appleton, Sells, Ortiz-Self, Robinson, Jinkins, Gregerson, Ryu, Peterson, Walkinshaw, Santos, Pollet and Farrell.

#### Brief Summary of Bill

- Prohibits a law enforcement agency (LEA) from detaining any person on the basis of an immigration detainer or administrative warrant after the person becomes eligible for release.
- Prohibits denial of bail solely on the basis of an immigration detainer or administrative warrant.
- Prohibits a LEA from assisting an immigration agent or expending state or local resources to comply with an immigration detainer, administrative warrant, or any other noncriminal immigration enforcement.
- Prohibits a law enforcement official from stopping, arresting, or detaining a person based solely on an immigration detainer or administrative warrant.
- Prohibits a LEA from entering into an agreement that permits the LEA to enforce federal civil immigration laws.
- Requires a certifying agency to adjudicate the request for certification by a victim of criminal activity according to a specific timeline and designate an agent to respond to such requests and perform other duties.
- Requires the Washington Law Enforcement Training Standards Board to adopt minimum standards for training on "U" and "T" non-immigrant visas.
- Creates the Washington Family Unity Act Compliance Board.
- Creates a cause of action allowing a person to challenge any LEA who fails to fully comply with the act.

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*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.*

**Hearing Date:** 2/11/15

**Staff:** Cassie Jones (786-7303).

**Background:**

Alien.

Under federal law, the term "alien" means any person not a citizen or national of the United States.

Interaction Between Immigration and Customs Enforcement and State and Local Agencies.

United States Immigration and Customs Enforcement (ICE) enforces federal laws governing border control, customs, trade, and immigration. The ICE was created in 2003 through a merger of the investigative and interior enforcement elements of the former United States Customs Service and the Immigration and Naturalization Service. The ICE operates a program called the Criminal Alien Program (CAP) which seeks to identify, arrest, and remove aliens who are incarcerated within federal, state, and local prisons and jails or who are at-large. Many county and municipal jails, as well as the Department of Corrections, participate in the CAP and collaborate with ICE officials in a variety of ways. Collaboration and cooperation is voluntary. The ICE implemented the Secure Communities program in 2008. Through this program, the ICE accesses fingerprint data received by the Federal Bureau of Investigation (FBI). All fingerprint data submitted by Washington agencies to the FBI is accessible by the Secure Communities program. Washington law requires that once a person is committed to a correctional facility, the facility must identify whether the person is an alien and notify immigration officials of an alien's commitment.

Administrative Warrants.

Immigration and Customs Enforcement has the authority to issue a warrant of deportation for any alien with an outstanding order of deportation that has become final. The warrant of deportation authorizes ICE officers to take an alien into custody and remove the alien. If consistent with state law, federal law permits state and local law enforcement to arrest and detain an individual who is an alien illegally present in the United States and has previously been convicted of a felony in the United States and deported or left the United States after the felony conviction, but only after the state or local law enforcement has confirmed through the ICE the status of the individual. Under Washington law, state and local officers are permitted to arrest under those circumstances because illegal re-entry after removal or deportation is a felony.

Immigration Detainers.

An immigration detainer is described in section 287.7 of Title 8 of the Code of Federal Regulations as a request from the ICE to a federal, state, or local law enforcement agency that the agency notify the ICE before releasing an alien in their custody, so as to allow the ICE to assume custody for the purposes of arrest and removal. 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 an alien 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 ICE to assume custody.

### "U" and "T" Visas.

Victims of certain designated crimes (e.g., domestic violence, felonious assault, involuntary servitude, and numerous other offenses) can be granted a nonimmigrant "U" visa for three years when requisite officials certify that the applicant has been, is, or is likely to be helpful in any investigation or prosecution of the crime. Victims of sex trafficking and labor trafficking can be granted a "T" visa for three years when requisite officials certify that the applicant has complied with any reasonable request for assistance in any investigation or prosecution of the trafficking crime or other crime in which acts of trafficking are at least one central reason for the commission of that crime.

### **Summary of Bill:**

#### Interaction among Immigration and Customs Enforcement and State and Local Agencies.

A LEA may not do the following:

- detain or continue to detain an individual on the basis of an immigration detainer or administrative warrant after the person becomes eligible for release;
- give any immigration agent access to a person or allow the agent use of the LEA's facilities for any purpose;
- provide booking lists to an immigration agent;
- expend resources responding to immigration agent inquiries or communicate with the agent regarding any person's incarceration status, release date, or contact information;
- expend resources to comply with an immigration detainer or administrative warrant or facilitate any other non-criminal immigration enforcement;
- stop, arrest, search, or detain a person based solely on an administrative warrant; and
- enter into an agreement with a federal agency which permits it to enforce federal immigration laws.

Bail may not be denied a person based solely on an immigration detainer or warrant.

State and local units of government may not contract with a private for profit vendor for the provision of services relating to the operation or management of a facility to detain individuals in federal immigration removal proceedings, or otherwise facilitate the construction, operation or management of such a facility.

### "U" and "T" Visas.

When a victim of criminal activity requests a certification for a visa, the certifying agency must adjudicate the request within 90 days of its receipt. If the victim requesting certification is subject to removal proceedings, the certifying agency must execute the certification no later than 14 days after its receipt. If the victim of criminal activity is under 21 years old or has children under 21, and may lose the ability to procure a "U" or "T" visa based on age, the certifying agency must execute the certification no later than 14 days before the victim or his or her children reach the age of 21 years old, or within 90 days of the request, whichever is earlier. If the agency denies the request for certification, it must do so in writing and articulate the reasons for the denial. If the agency fails to meet the above deadlines, or the victim disputes the denial of the request, the victim may bring an action in state court to seek certification.

The head of every certifying agency must designate an agent to perform the following responsibilities:

- respond to certification requests;
- provide outreach to victims of criminal activity to inform them of the agency's certification process; and
- keep written records of all certification requests and responses and report them to the Washington Family Unity Act Compliance Board (Board) each year.

All certifying agencies must develop a language access protocol for non-English speaking victims of criminal activity.

The Washington Law Enforcement Training Standards Board must adopt rules for minimum standards for a course of study of cultural sensitivity that includes training on "U" and "T" non-immigrant visas and other remedies for immigrant survivors of criminal activity.

All LEAs must provide continuing education concerning "U" and "T" non-immigrant visas and cultural diversity awareness.

#### Washington Family Unity Act Compliance Board.

The Board is created with members to be appointed by the Governor. The Board consists of five members serving three year terms. Membership is to be chosen from among immigrant communities, law enforcement, and other entities concerned with public safety and effective cooperation between immigrants and local police. The following are the Board's duties:

- monitor compliance with the act;
- train LEAs and others about the act;
- disseminate information about the act to affected communities and the public;
- establish mechanisms by which the public can report concerns regarding the implementation of the act;
- identify implementation issues to the Governor and the Attorney General; and
- conduct research on investigations of citizenship status by LEAs, sharing of information in LEAs' databases with immigration agents, immigration agents' use of state databases, and the impact of database sharing between immigration agents and LEAs on immigrant communities.

#### Cause of Action.

Any person residing in Washington may bring an action in state court to challenge any LEA's failure to comply with the act. If an LEA is found to have failed to comply with the act, the court must order the LEA to pay a fine of between \$1,000 and \$5,000 for each instance the LEA violated the act. A person who prevails in the action is entitled to costs and attorney's fees. Unless the officer acted in bad faith, the officer is indemnified by the LEA for costs and expenses incurred in connection with the action.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2015.

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