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**HOUSE BILL 1716**

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**State of Washington 64th Legislature 2015 Regular Session**

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

AN ACT Relating to state and local enforcement of federal immigration detainers and administrative warrants; adding a new chapter to Title 10 RCW; repealing RCW 10.70.140; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act may be known and cited as the Washington family unity act.

NEW SECTION. **Sec.**  (1) The legislature finds that immigration enforcement is the responsibility of the federal government. The undertaking of immigration enforcement by state and local law enforcement agencies undermines their ability to carry out their primary missions, can result in constitutional violations, and puts local jurisdictions at risk of incurring liability.

(2) The legislature also finds that ensuring that all victims of crime are able to access the protections available to them under law is in the best interest of victims and the entire community.

NEW SECTION. **Sec.**  (1) "Administrative warrant" means an immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document, issued by an immigration agent that can form the basis for an individual's arrest or detention for a civil immigration enforcement purpose.

(2) "Certification" means any law enforcement certification or statement required by federal immigration law including, but not limited to, the information required by 8 U.S.C. Sec. 1184(p) and 8 U.S.C. Sec. 1184(o), including current USCIS form I-918, supplement B and USCIS form I-914, supplement B, respectively, and any successor forms.

(3) "Certifying agency" means a state or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of criminal activity. A certifying agency includes agencies that have criminal investigative jurisdiction in their respective areas of expertise including, but not limited to, the Washington department of labor and industries and the Washington department of social and health services.

(4) "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time or manner of a person's entry into the United States, or any other civil immigration matter enforced by the department of homeland security or other federal agency charged with the enforcement of civil immigration laws.

(5) "Criminal activity" means any activity that is a crime under the Revised Code of Washington or any similar activity under any city or municipal code regardless of whether the activity resulted in a prosecution.

(6) "Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

(a) All criminal charges against the individual have been dismissed;

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

(c) The individual has served all the time required for his or her sentence;

(d) The individual has posted a bond; or

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

(7) "Immigration agent" means an agent of United States immigration and customs enforcement, United States customs and border protection, any individuals authorized to conduct enforcement of civil immigration laws under 8 U.S.C. Sec. 1357(g) or any other federal law, other federal agents charged with enforcement of civil immigration laws, and any successors.

(8) "Immigration detainer" means a document issued by an immigration agent to a federal, state, or local law enforcement agency that requests that the law enforcement agency provide notice of release or maintain custody of the individual based on an alleged violation of a civil immigration law, including detainers issued pursuant to section 287.7 or section 236.1 of Title 8 of the code of federal regulations, and on DHS form I-247 "Immigration Detainer – Notice of Action."

(9) "Law enforcement agency" means an agency in Washington charged with enforcement of state, county, municipal, or federal laws, or with managing custody of detained persons in the state, and includes municipal police departments, sheriff's departments, campus police departments, the Washington state patrol, and the juvenile justice rehabilitative administration.

(10) "Law enforcement official" means any officer or other agent of a state or local law enforcement agency authorized to enforce criminal statutes, regulations, or local ordinances or to operate jails or juvenile detention facilities or to maintain custody of individuals in jails or juvenile detention facilities.

(11) "Victim of criminal activity" means any individual who has reported criminal activity to a law enforcement agency or certifying agency, or has otherwise participated in the detection, investigation, or prosecution of criminal activity, who has suffered direct or proximate harm as a result of the commission of any criminal activity and may include, but not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under twenty-one years of age and, if the direct victim is under twenty-one years of age, parents, and unmarried siblings under eighteen years of age where the direct victim is deceased, incompetent, or incapacitated. Bystander victims must also be considered. More than one victim may be identified and provided with certification depending upon the circumstances. For purposes of this subsection, the term "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance or age, such as minors.

NEW SECTION. **Sec.**  (1) A law enforcement agency may not detain or continue to detain any individual on the basis of any immigration detainer or administrative warrant, or otherwise comply with an immigration detainer or administrative warrant, after that individual becomes eligible for release from custody.

(2) An individual subject to an immigration detainer or administrative warrant may not be denied bail solely on the basis of that immigration detainer or administrative warrant. This subsection may not be construed to undermine the authority of a court to make a bail or bond determination according to its usual procedures.

(3)(a) Except as required by chapter 42.56 or 70.48 RCW or as provided in this subsection, a law enforcement official or other law enforcement agency personnel may not:

(i) Give any immigration agent access to any individual or allow any immigration agent to use law enforcement agency facilities for investigative interviews or other purposes;

(ii) Provide any booking lists to an immigration agent; or

(iii) Expend resources responding to immigration agent inquiries or communicating with immigration agents regarding any individual's incarceration status, release date, or contact information.

(b) This subsection (3) does not restrict the authority of any law enforcement official or law enforcement agency to conduct any of the activities listed in this subsection (3) if an immigration agent presents a valid warrant issued by a court of competent jurisdiction or if the law enforcement official has a legitimate law enforcement purpose that is not related to the enforcement of immigration laws.

(4) Except as required by chapter 42.56 or 70.48 RCW or as expressly provided in this chapter, a law enforcement agency may not expend state or local law enforcement resources to comply with an immigration detainer or administrative warrant or facilitate any other noncriminal immigration enforcement.

(5) This section does not restrict any expenditure or activity necessary to the performance by the state, any local unit of government, any law enforcement or other agency, officer, employee, or agent thereof of any obligations under any contract between the state, the local unit of government, or the agency and federal officials regarding the use of a facility to detain individuals in federal immigration removal proceedings.

(6) The state, local units of government, or agencies may not contract with a private for profit vendor or contractor for the provision of services, other than ancillary services, relating to the operation or management of a facility to detain individuals in federal immigration removal proceedings, or to approve any permits, zoning changes, or other measures required for, or to otherwise facilitate, the construction, operation, or management of such a facility.

NEW SECTION. **Sec.**  A law enforcement official may not stop, arrest, search, detain, or continue to detain a person based solely on an administrative warrant entered into the federal bureau of investigation's national crime information center database, or any successor or similar database maintained by the United States.

NEW SECTION. **Sec.**  A law enforcement agency may not enter into an agreement under 8 U.S.C. Sec. 1357(g) or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.

NEW SECTION. **Sec.**  (1) A certifying agency shall adjudicate any certification requested by any victim of criminal activity or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider, within ninety days of receiving any such request. In any case in which the victim seeking certification is in federal immigration removal proceedings, the certifying agency shall execute the certification no later than fourteen days after the request is received by the agency. In any case in which the victim or the victim's children would lose any benefits under 8 U.S.C. Sec. 1184(p) and 8 U.S.C. Sec. 1184(o) by virtue of having reached the age of twenty-one years within ninety days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than fourteen days before the date on which the victim or child would reach the age of twenty-one years or ninety days from the date of the request, whichever is earlier. Requests for expedited certification must be affirmatively raised by the victim. If a certifying agency denies the certification request, it must do so in writing and must articulate the reasons for the denial.

(2) If a certifying agency fails to certify within the time limit prescribed in subsection (1) of this section, or a victim of criminal activity disputes the content of a certification or the denial of a certification request, then the victim of criminal activity may bring an action in state court to seek certification or amend the certification. This subsection does not limit a state or local judge's authority to execute a certification outside the procedures established by this section.

(3) The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities:

(a) Respond to requests for certifications;

(b) Provide outreach to victims of criminal activity to inform them of the agency's certification process; and

(c) Keep written records of all certification requests and responses, which must be reported to the Washington family unity act compliance board on an annual basis.

(4) All certifying agencies shall develop a language access protocol for non-English speaking victims of criminal activity.

(5) A certifying agency shall reissue any certification within ninety days of receiving a request from the victim of criminal activity or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider.

(6) A certifying agency may not disclose information regarding the citizenship or immigration status of any victim of criminal activity who is requesting a certification unless required to do so by chapter 42.56 RCW, applicable federal law, or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian.

(7) The Washington law enforcement training standards board shall adopt rules for minimum standards for a course of study on cultural sensitivity training, including training on U and T nonimmigrant visas among other remedies for immigrant survivors of criminal activity. Each law enforcement agency's continuing education program must provide law enforcement officials continuing education concerning the U and T nonimmigrant visas and continuing education concerning cultural diversity awareness.

(8) All certifying agencies not subject to the training requirements described in subsection (7) of this section shall adopt a training program on U and T nonimmigrant visas and other remedies for immigrant survivors of criminal activity.

NEW SECTION. **Sec.**  The governor shall appoint a Washington family unity act compliance board within ninety days of the effective date of this section. The board must consist of five members, serving terms of three years, representing immigrant communities, law enforcement, and other entities concerned with public safety and effective cooperation between immigrants and local police. The board is responsible for all of the following:

(1) Monitoring compliance under this chapter;

(2) Training of law enforcement officers and others about this chapter;

(3) Dissemination of information about this chapter to affected communities and the general public;

(4) Establishing mechanisms by which the public can report concerns and recommendations regarding implementation of this chapter;

(5) Identifying implementation issues and other trends, and providing recommendations to the governor and the attorney general for addressing these issues;

(6) Conducting research regarding sharing of immigration and citizenship status information and personally identifiable information, between law enforcement agencies and immigration and customs enforcement including, but not limited to, research regarding: (a) Requests for or investigations of immigration and citizenship status information by law enforcement agencies and officials; (b) sharing of information and data posted in the Washington law enforcement agencies database system or any other state administered database to which immigration agents have access; (c) immigration agents' use of the Washington state patrol-administered crime-related database or any other state administered database; and (d) the impact of such requests, investigations, and sharing and use of information on relations between law enforcement agencies and immigrant communities;

(7) Conducting additional research as may be necessary, including but not limited to requesting and disseminating data from law enforcement agencies relevant to this chapter and its impact on law enforcement agencies, police community relations, affected communities, and the state overall; and

(8) Other responsibilities relating to this chapter identified by the board.

NEW SECTION. **Sec.**  (1) Any person who resides in the state of Washington may bring an action in state superior court to challenge any law enforcement official or agency for failure to fully comply with this chapter. If there is a judicial finding that a law enforcement official or agency has violated this chapter, the court shall order that the law enforcement official or agency pay a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each instance that the law enforcement official or agency has violated this chapter.

(2) The court shall collect the civil penalty prescribed in subsection (1) of this section and remit the civil penalty to the crime victim services division of the office of the attorney general for use in its programs to assist victims of crime.

(3) Any person who prevails against a law enforcement official or agency in a proceeding brought pursuant to this section shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action.

(4) Except in relation to matters in which a law enforcement officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement agency for reasonable costs and expenses, including attorneys' fees, incurred by an officer in connection with any action, suit, or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

NEW SECTION. **Sec.**  If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  RCW 10.70.140 (Aliens committed—Notice to immigration authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1 are each repealed.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act constitute a new chapter in Title 10 RCW.

**--- END ---**