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HOUSE BILL 1716

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

Read first time 01/27/15. Referred to Committee on Public Safety.

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

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
7 Washington family unity act.

8 NEW SECTION. **Sec. 2.** (1) The legislature finds that immigration  
9 enforcement is the responsibility of the federal government. The  
10 undertaking of immigration enforcement by state and local law  
11 enforcement agencies undermines their ability to carry out their  
12 primary missions, can result in constitutional violations, and puts  
13 local jurisdictions at risk of incurring liability.

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

17 NEW SECTION. **Sec. 3.** (1) "Administrative warrant" means an  
18 immigration warrant of arrest, order to detain or release aliens,  
19 notice of custody determination, notice to appear, removal order,

1 warrant of removal, or any other document, issued by an immigration  
2 agent that can form the basis for an individual's arrest or detention  
3 for a civil immigration enforcement purpose.

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

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

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

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

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

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

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

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

38 (d) The individual has posted a bond; or

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

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

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

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

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

26 (11) "Victim of criminal activity" means any individual who has  
27 reported criminal activity to a law enforcement agency or certifying  
28 agency, or has otherwise participated in the detection,  
29 investigation, or prosecution of criminal activity, who has suffered  
30 direct or proximate harm as a result of the commission of any  
31 criminal activity and may include, but not limited to, an indirect  
32 victim, regardless of the direct victim's immigration or citizenship  
33 status, including the spouse, children under twenty-one years of age  
34 and, if the direct victim is under twenty-one years of age, parents,  
35 and unmarried siblings under eighteen years of age where the direct  
36 victim is deceased, incompetent, or incapacitated. Bystander victims  
37 must also be considered. More than one victim may be identified and  
38 provided with certification depending upon the circumstances. For  
39 purposes of this subsection, the term "incapacitated" means unable to  
40 interact with law enforcement agency or certifying agency personnel

1 as a result of a cognitive impairment or other physical limitation,  
2 or because of physical restraint or disappearance or age, such as  
3 minors.

4 NEW SECTION. **Sec. 4.** (1) A law enforcement agency may not  
5 detain or continue to detain any individual on the basis of any  
6 immigration detainer or administrative warrant, or otherwise comply  
7 with an immigration detainer or administrative warrant, after that  
8 individual becomes eligible for release from custody.

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

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

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

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

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

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

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

35 (5) This section does not restrict any expenditure or activity  
36 necessary to the performance by the state, any local unit of  
37 government, any law enforcement or other agency, officer, employee,  
38 or agent thereof of any obligations under any contract between the  
39 state, the local unit of government, or the agency and federal

1 officials regarding the use of a facility to detain individuals in  
2 federal immigration removal proceedings.

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

11 NEW SECTION. **Sec. 5.** A law enforcement official may not stop,  
12 arrest, search, detain, or continue to detain a person based solely  
13 on an administrative warrant entered into the federal bureau of  
14 investigation's national crime information center database, or any  
15 successor or similar database maintained by the United States.

16 NEW SECTION. **Sec. 6.** A law enforcement agency may not enter  
17 into an agreement under 8 U.S.C. Sec. 1357(g) or any other federal  
18 law that permits state or local governmental entities to enforce  
19 federal civil immigration laws.

20 NEW SECTION. **Sec. 7.** (1) A certifying agency shall adjudicate  
21 any certification requested by any victim of criminal activity or  
22 representative thereof including, but not limited to, the victim's  
23 attorney, accredited representative, or domestic violence service  
24 provider, within ninety days of receiving any such request. In any  
25 case in which the victim seeking certification is in federal  
26 immigration removal proceedings, the certifying agency shall execute  
27 the certification no later than fourteen days after the request is  
28 received by the agency. In any case in which the victim or the  
29 victim's children would lose any benefits under 8 U.S.C. Sec. 1184(p)  
30 and 8 U.S.C. Sec. 1184(o) by virtue of having reached the age of  
31 twenty-one years within ninety days after the certifying agency  
32 receives the certification request, the certifying agency shall  
33 execute the certification no later than fourteen days before the date  
34 on which the victim or child would reach the age of twenty-one years  
35 or ninety days from the date of the request, whichever is earlier.  
36 Requests for expedited certification must be affirmatively raised by  
37 the victim. If a certifying agency denies the certification request,

1 it must do so in writing and must articulate the reasons for the  
2 denial.

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

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

14 (a) Respond to requests for certifications;

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

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

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

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

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

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

1 concerning the U and T nonimmigrant visas and continuing education  
2 concerning cultural diversity awareness.

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

7 NEW SECTION. **Sec. 8.** The governor shall appoint a Washington  
8 family unity act compliance board within ninety days of the effective  
9 date of this section. The board must consist of five members, serving  
10 terms of three years, representing immigrant communities, law  
11 enforcement, and other entities concerned with public safety and  
12 effective cooperation between immigrants and local police. The board  
13 is responsible for all of the following:

14 (1) Monitoring compliance under this chapter;

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 9.** (1) Any person who resides in the state of  
9 Washington may bring an action in state superior court to challenge  
10 any law enforcement official or agency for failure to fully comply  
11 with this chapter. If there is a judicial finding that a law  
12 enforcement official or agency has violated this chapter, the court  
13 shall order that the law enforcement official or agency pay a civil  
14 penalty of not less than one thousand dollars and not more than five  
15 thousand dollars for each instance that the law enforcement official  
16 or agency has violated this chapter.

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

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

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

33 NEW SECTION. **Sec. 10.** If any part of this act is found to be in  
34 conflict with federal requirements that are a prescribed condition to  
35 the allocation of federal funds to the state, the conflicting part of  
36 this act is inoperative solely to the extent of the conflict and with  
37 respect to the agencies directly affected, and this finding does not  
38 affect the operation of the remainder of this act in its application



1 to the agencies concerned. Rules adopted under this act must meet  
2 federal requirements that are a necessary condition to the receipt of  
3 federal funds by the state.

4 NEW SECTION. **Sec. 11.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 12.** RCW 10.70.140 (Aliens committed—Notice to  
9 immigration authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1 are  
10 each repealed.

11 NEW SECTION. **Sec. 13.** Sections 1 through 10 of this act  
12 constitute a new chapter in Title 10 RCW.

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