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**SUBSTITUTE HOUSE BILL 1716**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Moscoso, Appleton, Sells, Ortiz-Self, Robinson, Jenkins, Gregerson, Ryu, Peterson, Walkinshaw, Santos, Pollet, and Farrell)

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, law enforcement, and the entire  
17 community. Immigrants are frequently reluctant to cooperate with or  
18 contact law enforcement when they are victims of crimes, and the  
19 protections available to immigrants under the law are designed to  
20 strengthen the ability of law enforcement agencies to detect,

1 investigate, and prosecute cases of domestic violence, sexual  
2 assault, and other crimes while offering protection to such victims.

3 NEW SECTION. **Sec. 3.** (1) "Administrative warrant" means an  
4 immigration warrant of arrest, order to detain or release aliens,  
5 notice of custody determination, notice to appear, removal order,  
6 warrant of removal, or any other document, issued by an immigration  
7 agent that can form the basis for an individual's arrest or detention  
8 for a civil immigration enforcement purpose.

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

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

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

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

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

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

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

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

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

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

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

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

22 (9) "Law enforcement agency" means any agency in Washington that  
23 qualifies as a criminal justice agency under RCW 10.97.030(5) and is  
24 charged with enforcement of state, county, municipal, or federal  
25 laws, or with managing custody of detained persons in the state, and  
26 includes municipal police departments, sheriff's departments, campus  
27 police departments, the Washington state patrol, and the juvenile  
28 justice rehabilitative administration. "Law enforcement agency" does  
29 not include the Washington state department of corrections.

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

35 (11) "Victim of criminal activity" means any individual who has  
36 reported criminal activity to a law enforcement agency or certifying  
37 agency, or has otherwise participated in the detection,  
38 investigation, or prosecution of criminal activity, or has suffered  
39 direct or proximate harm as a result of the commission of any  
40 criminal activity and may include, but not be limited to, an indirect

1 victim, regardless of the direct victim's immigration or citizenship  
2 status, including the spouse, children under twenty-one years of age  
3 and, if the direct victim is under twenty-one years of age, parents,  
4 and unmarried siblings under eighteen years of age where the direct  
5 victim is deceased, incompetent, or incapacitated. Bystander victims  
6 must also be considered. More than one victim may be identified and  
7 provided with certification depending upon the circumstances. For  
8 purposes of this subsection, the term "incapacitated" means unable to  
9 interact with law enforcement agency or certifying agency personnel  
10 as a result of a cognitive impairment or other physical limitation,  
11 or because of physical restraint or disappearance or age, such as  
12 minors.

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

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

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

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

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

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

38 (4) Except as required by chapter 42.56 or 70.48 RCW or as  
39 expressly provided in this chapter, a law enforcement agency may not

1 expend state or local law enforcement resources to comply with an  
2 immigration detainer or administrative warrant or facilitate any  
3 other noncriminal immigration enforcement.

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

11 (6) The state, local units of government, or agencies may not  
12 contract with a private for profit vendor or contractor for the  
13 following activities relating to the operation or management of a  
14 facility to detain individuals in federal removal proceedings:

15 (a) The provision of services, other than ancillary services such  
16 as water, sewer, garbage, and other utilities; or

17 (b) The approval of any permits, zoning changes, or other  
18 measures required for, or to otherwise facilitate, the construction,  
19 operation, or management of such a facility.

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

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

29 NEW SECTION. **Sec. 7.** (1) A certifying agency shall make a  
30 determination regarding a certification requested by any victim of  
31 criminal activity or representative thereof including, but not  
32 limited to, the victim's attorney, accredited representative, or  
33 domestic violence, sexual assault, or victim service provider, within  
34 ninety days of receiving any such request. In any case in which the  
35 victim seeking certification is in federal immigration removal  
36 proceedings, the certifying agency shall execute the certification no  
37 later than fourteen days after the request is received by the agency.

1 In any case in which the victim or the victim's children would lose  
2 any benefits under 8 U.S.C. Sec. 1184(p) and 8 U.S.C. Sec. 1184(o) by  
3 virtue of having reached the age of twenty-one years within ninety  
4 days after the certifying agency receives the certification request,  
5 the certifying agency shall execute the certification no later than  
6 fourteen days before the date on which the victim or child would  
7 reach the age of twenty-one years or ninety days from the date of the  
8 request, whichever is earlier. Requests for expedited certification  
9 must be affirmatively raised by the victim. If a certifying agency  
10 denies the certification request, it must do so in writing and must  
11 articulate the reasons for the denial.

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

15 (a) Respond to requests for certifications;

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

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

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

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

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

35 (6) The Washington law enforcement training standards board shall  
36 adopt rules for minimum standards for a course of study on cultural  
37 sensitivity training, including training on U and T nonimmigrant  
38 visas among other remedies for immigrant survivors of criminal  
39 activity, as well as education concerning cultural diversity  
40 awareness.

1 (7) All certifying agencies not subject to the training  
2 requirements described in subsection (6) of this section shall adopt  
3 a training program on U and T nonimmigrant visas and other remedies  
4 for immigrant survivors of criminal activity, as well as education  
5 concerning cultural diversity awareness.

6 (8) All certifying agencies must do the following within eighteen  
7 months of the effective date of this section:

8 (a) Complete the training described in subsections (6) and (7) of  
9 this section; and

10 (b) Report on the completion of the training described in  
11 subsections (6) and (7) of section to the Washington family unity act  
12 compliance board.

13 NEW SECTION. **Sec. 8.** The governor shall appoint a Washington  
14 family unity act compliance board within ninety days of the effective  
15 date of this section. The board must consist of five members, serving  
16 terms of three years, representing immigrant communities, law  
17 enforcement, providers of services to survivors of domestic violence,  
18 sexual assault, and other crimes, and other entities concerned with  
19 public safety and effective cooperation between immigrants and local  
20 police. The board is responsible for all of the following:

21 (1) Monitoring compliance under this chapter;

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

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

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

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

32 (6) Conducting research regarding sharing of immigration and  
33 citizenship status information and personally identifiable  
34 information, between law enforcement agencies and immigration and  
35 customs enforcement including, but not limited to, research  
36 regarding: (a) Requests for or investigations of immigration and  
37 citizenship status information by law enforcement agencies and  
38 officials; (b) sharing of information and data posted in the  
39 Washington law enforcement agencies database system or any other

1 state administered database to which immigration agents have access;  
2 (c) immigration agents' use of the Washington state patrol-  
3 administered crime-related database or any other state administered  
4 database; and (d) the impact of such requests, investigations, and  
5 sharing and use of information on relations between law enforcement  
6 agencies and immigrant communities;

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

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

14 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
15 conflict with federal requirements that are a prescribed condition to  
16 the allocation of federal funds to the state, the conflicting part of  
17 this act is inoperative solely to the extent of the conflict and with  
18 respect to the agencies directly affected, and this finding does not  
19 affect the operation of the remainder of this act in its application  
20 to the agencies concerned. Rules adopted under this act must meet  
21 federal requirements that are a necessary condition to the receipt of  
22 federal funds by the state.

23 NEW SECTION. **Sec. 10.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 11.** RCW 10.70.140 (Aliens committed—Notice to  
28 immigration authority) and 1992 c 7 s 29 & 1925 ex.s. c 169 s 1 are  
29 each repealed.

30 NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act  
31 constitute a new chapter in Title 10 RCW.

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