



Senate

General Assembly

File No. 535

January Session, 2019

Substitute Senate Bill No. 992

Senate, April 8, 2019

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE TRUST ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-192h of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) For the purposes of this section:

4 (1) "Administrative warrant" means a warrant, notice to appear,
5 removal order or warrant of deportation issued by an agent of a
6 federal agency charged with the enforcement of immigration laws or
7 the security of the borders, including ICE and the United States
8 Customs and Border Protection, but does not include a warrant issued
9 or signed by a judicial officer.

10 [(1)] (2) "Civil immigration detainer" means a [detainer request
11 issued pursuant to 8 CFR 287.7;] request from a federal immigration
12 authority to a local or state law enforcement agency for a purpose
13 including, but not limited to:

14 (A) Detaining an individual suspected of violating a federal
15 immigration law or who has been issued a final order of removal;

16 (B) Facilitating the (i) arrest of an individual by a federal
17 immigration authority, or (ii) transfer of an individual to the custody
18 of a federal immigration authority;

19 (C) Providing notification of the release date and time of an
20 individual in custody; and

21 (D) Notifying a law enforcement officer, through DHS Form I-247A,
22 or any other form used by the United States Department of Homeland
23 Security or any successor agency thereto, of the federal immigration
24 authority's intent to take custody of an individual;

25 [(2) "Convicted of a felony" means that a person has been convicted
26 of a felony, as defined in section 53a-25, pursuant to a final judgment
27 of guilt entered by a court in this state or in a court of competent
28 jurisdiction within the United States upon a plea of guilty, a plea of
29 nolo contendere or a finding of guilty by a jury or the court
30 notwithstanding any pending appeal or habeas corpus proceeding
31 arising from such judgment;]

32 (3) "Confidential information" means any information obtained and
33 maintained by a law enforcement agency relating to (A) an
34 individual's (i) sexual orientation, (ii) status as a victim of domestic
35 violence or sexual assault, or (iii) immigration status, (B) whether such
36 individual is a (i) crime witness, or (ii) recipient of public assistance, or
37 (C) an individual's income tax or other financial records, including, but
38 not limited to, Social Security numbers;

39 [(3)] (4) "Federal immigration authority" means any officer,
40 employee or other person otherwise paid by or acting as an agent of
41 [United States Immigration and Customs Enforcement] ICE or any
42 division thereof or any officer, employee or other person otherwise
43 paid by or acting as an agent of the United States Department of
44 Homeland Security or any successor agency thereto who is charged

45 with enforcement of the civil provisions of the Immigration and
46 Nationality Act; [and]

47 (5) "ICE" means United States Immigration and Customs
48 Enforcement or any successor agency thereto;

49 (6) "ICE access" means any of the following actions taken by a law
50 enforcement officer with respect to an individual who is stopped by a
51 law enforcement officer with or without the individual's consent,
52 arrested, detained or otherwise under the control of a law enforcement
53 official or agency:

54 (A) Responding to a civil immigration detainer or request for
55 notification pursuant to subparagraph (B) of this subdivision
56 concerning such individual;

57 (B) Providing notification to a federal immigration authority that
58 such individual is being or will be released at a certain date and time
59 through data sharing or otherwise;

60 (C) Providing a federal immigration authority nonpublicly available
61 information concerning such individual regarding release date or time,
62 home address or work address, whether obtained through a computer
63 database or otherwise;

64 (D) Allowing a federal immigration authority to interview such
65 individual under the control of the law enforcement agency;

66 (E) Allowing a federal immigration authority to use a facility or
67 resources in the control of a law enforcement agency to conduct
68 interviews, administrative proceedings or other immigration
69 enforcement activities concerning such individual; or

70 (F) Providing a federal immigration authority information
71 regarding dates and times of probation or parole supervision or any
72 other information related to such individual's compliance with the
73 terms of probation or parole;

74 (7) "Judicial officer" means any judge of the state or federal judicial
75 branches other than an immigration judge;

76 (8) "Law enforcement agency" means any agency for which a law
77 enforcement officer is an employee of or otherwise paid by or acting as
78 an agent of;

79 [(4)] (9) "Law enforcement officer" means:

80 (A) Each officer, employee or other person otherwise paid by or
81 acting as an agent of the Department of Correction;

82 (B) Each officer, employee or other person otherwise paid by or
83 acting as an agent of a municipal police department;

84 (C) Each officer, employee or other person otherwise paid by or
85 acting as an agent of the Division of State Police within the
86 Department of Emergency Services and Public Protection; and

87 (D) Each judicial marshal, [and] state marshal, [.] bail commissioner
88 and adult probation officer; and

89 (10) "School police or security department" means any police or
90 security department of (A) the constituent units of the state system of
91 higher education, as defined in section 10a-1, (B) a public school, or (C)
92 a local or regional school district.

93 (b) No law enforcement officer [who receives a civil immigration
94 detainer with respect to an individual who is in the custody of the law
95 enforcement officer shall detain such] or employee of a school police or
96 security department shall:

97 (1) Detain an individual pursuant to [such] a civil immigration
98 detainer unless the [law enforcement official determines that the
99 individual:] detainer is accompanied by a warrant issued or signed by
100 a judicial officer;

101 [(1) Has been convicted of a felony;

102 (2) Is subject to pending criminal charges in this state where bond
103 has not been posted;

104 (3) Has an outstanding arrest warrant in this state;

105 (4) Is identified as a known gang member in the database of the
106 National Crime Information Center or any similar database or is
107 designated as a Security Risk Group member or a Security Risk Group
108 Safety Threat member by the Department of Correction;

109 (5) Is identified as a possible match in the federal Terrorist Screening
110 Database or similar database;

111 (6) Is subject to a final order of deportation or removal issued by a
112 federal immigration authority; or

113 (7) Presents an unacceptable risk to public safety, as determined by
114 the law enforcement officer.]

115 (2) Expend or use time, money, facilities, property, equipment,
116 personnel or other resources to communicate with a federal
117 immigration authority regarding the custody status or release of an
118 individual targeted by a civil immigration detainer, except as provided
119 in subsection (e) of this section;

120 (3) Arrest or detain an individual based on a civil immigration
121 detainer or an administrative warrant;

122 (4) Give a federal immigration authority access to interview an
123 individual who is in the custody of a law enforcement agency;

124 (5) Perform any function of a federal immigration authority,
125 whether pursuant to 8 USC 1357(g) or any other law, regulation,
126 agreement, contract or policy, whether formal or informal; or

127 (6) Expend or use time, money, facilities, property, equipment,
128 personnel or other resources to investigate, enforce or assist in the
129 investigation or enforcement of any federal program requiring
130 registration of an individual on the basis of race, gender, age, sexual

131 orientation, religion, country from which the individual has
132 immigrated or national or ethnic origin.

133 [(c) Upon determination by the law enforcement officer that such
134 individual is to be detained or released, the law enforcement officer
135 shall immediately notify United States Immigration and Customs
136 Enforcement. If the individual is to be detained, the law enforcement
137 officer shall inform United States Immigration and Customs
138 Enforcement that the individual will be held for a maximum of forty-
139 eight hours, excluding Saturdays, Sundays and federal holidays. If
140 United States Immigration and Customs Enforcement fails to take
141 custody of the individual within such forty-eight-hour period, the law
142 enforcement officer shall release the individual. In no event shall an
143 individual be detained for longer than such forty-eight-hour period
144 solely on the basis of a civil immigration detainer.]

145 (c) Prior to responding to a request for notification of an individual's
146 release date and time from custody of a law enforcement agency, the
147 law enforcement officer shall forward the request to the head of the
148 law enforcement agency for review.

149 (d) Any confidential information of an individual who comes into
150 contact with a law enforcement officer may be disclosed to a federal
151 immigration authority only if such disclosure is:

152 (1) Authorized in writing by the individual to whom the
153 information pertains, or by the parent or guardian of such individual if
154 the individual is a minor or not legally competent to consent to such
155 disclosure;

156 (2) Necessary in furtherance of a criminal investigation of potential
157 terrorism; or

158 (3) Otherwise required by law.

159 (e) (1) Upon receiving a civil immigration detainer, a law
160 enforcement agency shall provide a copy of the detainer to the affected
161 individual who is the subject of the detainer and inform the individual

162 whether the law enforcement agency intends to comply with the
163 detainer. If a law enforcement agency provides ICE with notification
164 that an individual is being, or will be released on a certain date, the
165 law enforcement agency shall promptly provide to the individual and
166 to the individual's attorney or one other individual who the individual
167 may designate, a copy of such notification as well as the reason, in
168 writing, that such law enforcement agency is complying with the
169 detainer.

170 (2) All records relating to ICE access maintained by law enforcement
171 agencies shall be deemed public records under the Freedom of
172 Information Act, as defined in section 1-200. Records relating to ICE
173 access include, but are not limited to, data maintained by the law
174 enforcement agency regarding the number and demographic data of
175 individuals to whom the agency has provided ICE access, the date ICE
176 access was provided to an individual, the type of ICE access provided
177 to an individual, the amount of resources expended on providing ICE
178 access and any communication between the law enforcement agency
179 and any federal immigration authority.

180 (3) Beginning January 1, 2020, the legislative body of any
181 municipality with a law enforcement agency that has provided ICE
182 access to an individual during the prior month shall provide to the
183 Office of Policy and Management, on an ongoing monthly basis, data
184 regarding the number and demographic data of individuals to whom
185 the law enforcement agency has provided ICE access, the date ICE
186 access was provided to an individual and whether the ICE access was
187 provided as part of compliance with a civil immigration detainer or
188 through other means. Data may be provided in the form of statistics or,
189 if statistics are not maintained, as individual records, provided
190 personally identifiable information is redacted.

191 (f) The Office of Policy and Management shall ensure that the
192 requirements of this section are disseminated to, and appropriate
193 training is provided for, all affected law enforcement agencies and
194 school police or security departments and employees and agents of

195 such law enforcement agencies and school police or security
 196 departments. Such training may entail how law enforcement officers
 197 and other officials performing similar duties will adhere to the
 198 provisions of this section and how they will interact with crime
 199 victims, potential criminal suspects and individuals cooperating with
 200 law enforcement officers.

201 (g) No provision of this section shall be construed to provide,
 202 expand or ratify the legal authority of any law enforcement agency to
 203 detain an individual based on a civil immigration detainer request.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	54-192h

Statement of Legislative Commissioners:

Throughout the bill, plural nouns and verbs were made singular and "person" was changed to "individual" for consistency. In Section 1(a)(2)(B), clause designators were added for clarity; in Section 1(a)(6), the introductory language was reorganized for clarity; in Section 1(a)(6)(A), a reference was added to Subparagraph (B) for clarity and Section 2(b)(4) was reorganized for clarity.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill makes procedural changes to civil immigration detainer law and does not result in a fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sSB 992*****AN ACT CONCERNING THE TRUST ACT.*****SUMMARY**

This bill makes several changes to the state's civil immigration detainer law. Among other things, the bill:

1. expands the definition of a civil immigration detainer and prohibits law enforcement officers from detaining someone pursuant to such a detainer unless it is accompanied by a judicial warrant (i.e., one signed by any state or federal judge other than an immigration judge);
2. establishes new procedures that law enforcement officers must follow when responding to these detainers, placing additional restrictions on the actions they may take and eliminating current law's requirement that they consider specific public safety and risk factors (see below);
3. limits the circumstances under which law enforcement officers may disclose an individual's confidential information to a federal immigration authority;
4. deems law enforcement agency records relating to U.S. Immigration and Customs Enforcement (ICE) access (see below) as public under the Freedom of Information Act (FOIA); and
5. applies certain of its provisions to school police or security department employees at public higher education or K-12 schools, bail commissioners, and adult probation officers.

The bill also requires (1) municipalities to report specified information monthly to the Office of Policy and Management (OPM), if

their law enforcement agency provided ICE access and (2) OPM to ensure that the law enforcement agencies and school police or security departments receive appropriate training.

It specifies that its provisions must not be construed to provide, expand, or ratify the legal authority of any law enforcement agency to detain an individual based on a civil immigration detainer request.

It also makes minor and technical changes.

EFFECTIVE DATE: October 1, 2019

CIVIL IMMIGRATION DETAINER

Definition

Under current law, an immigration detainer is a notice that the Department of Homeland Security (DHS) or an immigration officer issues to a law enforcement agency (1) informing the agency of DHS's intent to assume custody of a non-citizen in the agency's custody and (2) requesting that the agency advise DHS, before releasing the individual, in order for DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible. Federal civil immigration detainer regulations limit detentions to 48 hours (8 CFR § 287.7).

Under the bill, a "civil immigration detainer" is a request from a federal immigration authority to a local or state law enforcement agency for purposes such as:

1. detaining an individual suspected of violating a federal immigration law or who has been issued a final order of removal;
2. facilitating the arrest of an individual by a federal immigration authority or transfer of an individual to the custody of a federal immigration authority;
3. providing notification of the release date and time of an individual in custody; and

4. notifying a law enforcement officer, through DHS Form I-247A, or any other form used by the DHS or DHS's successor agency, of the federal immigration authority's intent to take custody of an individual.

Prohibited Actions Under the Bill

The bill prohibits law enforcement officers (including bail commissioners and adult probation officers) and school police or security department employees from:

1. detaining an individual pursuant to a civil immigration detainer unless the detainer is accompanied by a warrant issued or signed by a judicial officer (i.e., any state or federal judge other than an immigration judge);
2. expending or using time or resources to communicate with a federal immigration authority, including regarding the custody status or release of an individual targeted by a civil immigration detainer, except if the law enforcement agency notifies the affected individuals, in writing, of its intent to comply with the detainer and the reason for doing so;
3. arresting an individual based on a civil immigration detainer or an administrative warrant (i.e., a non-judicial warrant, removal order, or similar document issued by a federal immigration enforcement agent).
4. detaining an individual based on an administrative warrant or a civil immigration detainer (presumably unless the detainer is accompanied by a judicial warrant, consistent with item one above)(see COMMENT);
5. giving a federal immigration authority access to interview an individual who is in a law enforcement agency's custody;
6. performing any formal or informal function of a federal immigration authority; or

7. using time or resources to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of an individual on the basis of race, gender, age, sexual orientation, religion, country from which the individual immigrated, or national or ethnic origin.

New Required Procedures

Under the bill, upon receiving a civil immigration detainer, a law enforcement agency must provide a copy of the detainer to the affected individual who is the subject of the detainer and inform the individual whether the agency intends to comply with the detainer.

The bill requires a law enforcement agency that provides ICE with notification that an individual is being, or will be, released on a certain date, to promptly provide to the individual and to the individual's attorney or one other person the individual designates, a copy of the notification and the reason, in writing, that the agency is complying with the detainer.

Under the bill, before responding to a request for notification of an individual's release from the agency's custody, a law enforcement officer must first forward any such request to the head of the law enforcement agency.

The bill eliminates current law's requirement that law enforcement officers, upon determining whether to detain or release someone, immediately notify ICE that the person will be held for up to 48 hours (excluding Saturdays, Sundays, and federal holidays).

Elimination of Current Law's Risk Factors

The bill's new procedure replaces current law's requirement that law enforcement officers, in carrying out a civil immigration detainer regarding a person in their custody, not release the person unless they determine that he or she:

1. has been convicted of a felony;

2. is subject to pending criminal charges in Connecticut where bond has not been posted;
3. has an outstanding arrest warrant in Connecticut;
4. is identified by the Department of Correction (DOC) as a known gang member in the National Crime Information Center's database, or any similar database, or is designated as a Security Risk Group member or a Security Risk Group Safety Threat member;
5. is identified as a possible match in the federal Terrorist Screening Database or similar database;
6. is subject to a final deportation or removal order; or
7. presents an unacceptable risk to public safety.

DISCLOSURE OF CONFIDENTIAL INFORMATION

Under the bill, confidential information of an individual who comes into contact with a law enforcement official may be disclosed to a federal immigration authority only if the disclosure is:

1. authorized in writing by the individual, or by the parent or guardian if the individual is a minor or not legally competent to consent to such disclosure;
2. needed for a criminal investigation of potential terrorism; or
3. otherwise required by law.

Under the bill, "confidential information" means any information a law enforcement agency obtains or maintains relating to:

1. an individual's sexual orientation, status as a victim of domestic violence or sexual assault, or immigration status;
2. whether such individual is a crime witness or recipient of public assistance; or

3. an individual's income tax or other financial records, including Social Security numbers.

RECORDS RELATED TO ICE ACCESS DEEMED PUBLIC RECORDS

Under the bill, all records relating to ICE access maintained by law enforcement agencies are deemed public records under FOIA. Records relating to ICE access include:

1. law enforcement agency data on the number and demographic data of individuals to whom the agency has provided ICE access,
2. the date ICE access was provided and the type of access,
3. the amount of resources expended on providing ICE access, and
4. any communication between the agency and any federal immigration authority.

Under the bill, "ICE access" refers to any of the following actions by a law enforcement officer with respect to an individual who is stopped with or without the individual's consent, arrested, detained, or otherwise under the control of a law enforcement official or agency:

1. responding to a civil immigration detainer or notification request under the bill concerning such individual;
2. providing notification to a federal immigration authority that such individual is being or will be released at a certain date and time through data sharing or otherwise;
3. providing a federal immigration authority nonpublicly available information about such individual regarding release times or home or work addresses;
4. allowing a federal immigration authority to interview the individual in a law enforcement agency;
5. allowing a federal immigration authority to use a facility or

resources in the control of a law enforcement agency to conduct interviews, administrative proceedings, or other immigration enforcement activities concerning the individual; or

6. providing a federal immigration authority information regarding dates and times of probation or parole supervision or any other information related to the individual's compliance with the terms of probation or parole.

LAW ENFORCEMENT AGENCIES' MONTHLY REPORTING TO OPM

Under the bill, the legislative body of any municipality with a law enforcement agency that provided ICE access to an individual during the prior month must, starting January 1, 2020, and monthly thereafter, provide to OPM:

1. data on the number and demographic characteristics of individuals to whom the agency provided ICE access,
2. the date ICE access was provided, and
3. whether the ICE access was provided as part of compliance with a civil immigration detainer or through other means.

The data may be provided in statistical form or, if statistics are not maintained, as individual records with personally identifiable information redacted.

OPM TRAINING FOR LAW ENFORCEMENT AGENCIES AND SCHOOL POLICE OR SECURITY DEPARTMENTS

The bill requires OPM to ensure that the bill's requirements are disseminated to, and appropriate training is provided for, all affected law enforcement agencies and school police or security departments and their employees and agents.

Under the bill, the training may include how law enforcement officers and other officials performing similar duties (1) will adhere to the bill's provisions and (2) will interact with crime victims, potential

criminal suspects, and individuals cooperating with law enforcement officers.

COMMENT

The bill appears to have conflicting provisions. In §1(b)(1) it prohibits law enforcement officers from detaining someone pursuant to a civil immigration detainer unless it is accompanied by a judicial warrant. However, §1(b)(3) prohibits the officers from detaining someone based on a civil immigration detainer, without referencing a judicial warrant. Presumably if a detainer is accompanied by a judicial warrant a law enforcement officer may detain the individual, consistent with §1(b)(1).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 23 Nay 15 (03/20/2019)