



Legislation Text

File #: 2013-0285, **Version:** 3

AN ORDINANCE related to how the county will honor civil immigration hold requests from the United States Immigration and Customs Enforcement for individuals in the custody of the department of adult and juvenile detention; and adding a new section to K.C.C. chapter 2.15.

STATEMENT OF FACTS:

1. King County was renamed in honor of the Reverend Doctor Martin Luther King, Jr., and is a "home rule" government under Article XI, Section 4, of the Washington State Constitution.

Under its home rule power, the county may exercise any power and perform any function, unless preempted by state or federal law, relating to its government and affairs, including the power to regulate for the protection and rights of its inhabitants.

2. The enforcement of civil immigration laws has traditionally been, and continues to be, the responsibility primarily of the federal government. Since 2002, immigration enforcement operations have been carried out by the United States Immigration and Customs Enforcement, a division of the Department of Homeland Security, which was, before 2002, known as the Immigration and Naturalization Service.

3. Since the 1980s, the Immigration and Naturalization Service and Immigration and Customs Enforcement have been apprehending noncitizens arrested and detained by state and local criminal justice systems through numerous enforcement operations, primarily through some variation of the Criminal Alien Program. Under the program, federal agents use booking and other information provided by local law enforcement agencies to target noncitizens in local

agency custody for the placement of administrative immigration detainer requests that can result in a direct transfer upon release of noncitizens from local custody into immigration custody for initiation of removal proceedings.

4. In 2008, Congress directed the Department of Homeland Security to expand efforts to target noncitizens with serious criminal convictions for apprehension and removal. In response, the Department of Homeland Security, through Immigration and Customs Enforcement, created the Secure Communities program to complement its efforts under the Criminal Alien Program initiative. The key component of the Secure Communities program is automated information sharing between the Department of Homeland Security and the Federal Bureau of Investigation, primarily the sharing of fingerprint data collected from local jails for identifying individuals incarcerated in local facilities to be investigated for immigration proceedings.

5. Like the Criminal Aliens Program, noncitizens identified through the Secure Communities program and targeted for Immigration and Customs Enforcement apprehension can be subjected to placement of a detainer request while in custody of local jail officials. According to 9 C.F.R. Sec. 287.7(a), "A detainer serves to advise another law enforcement agency that the federal Department of Homeland Security seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible."

6. Since April 2012, Immigration and Customs Enforcement investigators have had access to all fingerprint data transmitted to federal authorities from jails in the state of Washington. Local jails have no discretion to opt out of participation in the Secure Communities program.

7. King County is dedicated to providing all of its residents fair and equal access to services,

opportunities and protection. In K.C.C. 2.10.210, the King County Strategic Plan declares as part of the "fair and just principle" that determinants of equity include "(c)ommunity and public safety that includes services such as fire, police, emergency medical services and code enforcement that are responsive to all residents so that everyone feels safe to live, work and play in any neighborhood of King County and a law and justice system that provides equitable access and fair treatment for all. K.C.C. 2.15.010 was enacted in 2009 to specifically ensure that all county residents have access to necessary services and benefits essential for upholding the county's commitment to fair and equal access for all residents. To further this policy, K.C.C. 2.15.010 established the requirement that no county office, department, employee, agency or agent shall condition the provision of county services on the citizenship or immigration status of any individual. K.C.C. 2.15.010 also established the requirement that sheriff's office personnel shall not request specific documents relating to a person's civil immigration status for the sole purpose of determining whether the individual has violated federal civil immigration laws.

8. In accordance with those code requirements, the department of adult and juvenile detention does not endeavor to determine the immigration status of any individual held in county detention. However, it is the current practice of the county to honor all civil immigration hold requests from Immigration and Customs Enforcement for detainees, whether identified through Criminal Alien Program or the Secure Communities program, by holding adult inmates for additional time after they would otherwise be released from county jail facilities.

9. It is often unclear whether the individual under investigation by Immigration and Customs Enforcement is being reviewed because of their criminal history or due to prior immigration administrative violations.

10. Although the intended focus of programs like Secure Communities is the removal of individuals with serious criminal records, data released by Immigration and Customs

Enforcement indicate that, between 2008 and 2011, seventy-eight percent of the detainer requests issued against individuals at the county adult jail involved individuals with no criminal records or convictions.

11. On March 26, 2013, the University of Washington released Immigration Detainer Requests in King County Washington: Costs & Consequences, a report analyzing jail data from 2011 and assessing the impacts of submitting to Immigration and Customs Enforcement's immigration detainer requests. The report concluded that four out of five individuals subjected to Immigration and Customs Enforcement detainer requests in 2011 had never been convicted of a felony. It also found that Immigration and Customs Enforcement detainer requests disproportionately impacted Latinos.

12. On February 11, 2013, the executive notified councilmembers by letter that he supports amending county code to include policy direction for the department of adult and juvenile detention to limit the circumstances under which it will exercise its authority to honor federal immigration detainers to individuals for whom the federal government has documented the individuals' criminal history as demonstrated by having been previously convicted of committing a violent or serious offense.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. In its deliberations on this legislation, the council has received public testimony from various individuals, organizations, and immigrant advocates in King County who recounted numerous instances where the exercise of federal detainers by the department of adult and juvenile detention has resulted in significant distrust of local law enforcement, dislocation of families, the loss of jobs and housing, economic loss to families and the community, and harm to children. Many testified through public input and the submission of written testimony that there are significant costs to the community, both in dollars and human suffering when

families become broken and dependent when the family breadwinner is detained or deported. Testimony established that the threat of deportation for the immigrant community is so strong that many persons are afraid to report domestic violence or witnessed crime. Further, many noted that children who are English-speaking U.S. citizens of an undocumented parent are uniquely vulnerable to the impacts of the exercise of federal detainers.

B. Data from the University of Washington study of detainers in King County shows that the county incurs significant costs resulting from honoring these detainers that by federal law are not reimbursed. As a result, the county incurs costs for supporting federal immigration enforcement efforts in a time when it is unable to fully fund its own local mandates such as unincorporated sheriff's patrol or other priorities such as human services programs for victims of domestic violence and the mentally ill.

C. Testimony from the King County sheriff and the interim chief of police for the Seattle Police Department noted that even the perception that local governments are cooperating with federal immigration enforcement efforts can significantly undermine the operations of local government. In particular, this perception can have a substantial damaging effect on the relationships between local law enforcement agencies and immigrant and refugee communities and this damage to trust between the immigrant community and law enforcement results in less public safety.

D. In its deliberations, the council also considered significant national and Washington State data that showed that the vast majority of Immigration and Customs Enforcement detainers are for individuals with no non-immigration criminal history, or for those with minor offenses. The council also considered data showing that a significant proportion of those who are taken into federal custody as a result of a detainer are subsequently released back into the community and not detained or deported.

E. Individuals being released from state custody are persons who are legally required to be released, except when being temporarily held as a result of a federal immigration detainer request. They do not include persons who present a danger to the community that can be addressed by state criminal or civil legal

proceedings. There is no basis to predict potential future dangerousness for such persons and hold them in state custody as a result. There is only a minimal and speculative risk of harm to public safety that might result from not honoring federal detainers for the individuals who do not have a demonstrable and significant criminal history.

F. The county council has now considered and balanced the competing policy concerns, advantages, and possible risks of amending the county code to limit the circumstances under which the department of adult and juvenile detention will exercise its authority to honor federal immigration detainers. The council recognizes that the cost to public trust in law enforcement, economic losses, and human suffering when weighed against the potential benefits of from exercising a detainer compels the council to limit and focus the circumstances under which it will honor federal detainers. The council has chosen to limit detainers to only those who have a demonstrable and significant criminal history and therefore might present some risk to public safety. The council has determined that the benefit of not honoring detainers for those who have immigration violations or minor criminal histories outweighs the costs to the county. Finally, this policy will further advance the county policy of providing all county residents with fair and equal access to services, opportunities and protection, and is essential to that policy.

NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 2.15 a new section to read as follows:

A. It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals who have been convicted of a violent or serious crime. The department of adult and juvenile detention may hold individuals for an additional forty-eight hours after they would otherwise be released only upon receipt of a written immigration hold request by a federal agent to detain a county inmate for suspected violations of federal civil immigration law, where one or more of the following apply:

1. United States Immigration and Customs Enforcement agents provide written documentation and

case identifying information that the individual has been previously convicted of a homicide at any time in the past; or that the individual either has been convicted of a violent, serious, sex, or serious traffic offense within the past ten years or within the past ten years has been released from prison after serving a sentence for a violent, serious, sex, or serious traffic offense conviction. For purposes of this section, "has been convicted of a violent, serious, sex or serious traffic offense" means the individual was convicted of a most serious offense as defined in RCW 9.94A.030, a sex offense as defined in RCW 9A.44, a conviction of any sexual exploitation of a children offense as defined in RCW 9.68A, residential burglary as defined in RCW 9A.52.025, drive-by shooting as defined in RCW 9A36.045, convicted of an offense of unlawful possession of a firearm as defined in RCW 9.41.040, a conviction of an offense with a firearm enhancement as defined in RCW 9.94A.533, or convicted of two or more serious traffic offenses as defined in RCW 9.94A.030; or where United States Immigration and Customs Enforcement agents provide written documentation that an individual has identified through United States immigration court proceedings as an inadmissible alien under 8 USC Section 1182(a)(2) (G), Foreign Government Officials who have committed particularly severe violations of religious freedom; 8 U.S.C. Section 1182(a)(3), Security and related grounds (terrorist activities, totalitarian parties, Nazi collaborators and recruitment of child soldiers); or 8 U.S.C. 1182(a)(10)(C) International child abduction: or

2. United States Immigration and Customs Enforcement agents provide written documentation and case identifying information that the individual has been convicted in any jurisdiction of an offense that, if committed in the state of Washington would meet the criteria outlined in subsection A.1. of this section.

B. Notwithstanding subsection A. of this section, the county shall not honor civil immigration hold requests for any individuals who are younger than eighteen years old.

C. This section does not create or form the basis for liability on the part of the county, its officers, employees or agents.

D. Beginning January 1, 2014, the department of adult and juvenile detention shall compile a listing all immigration detainers received by the department. Beginning May 1, 2014, the department

shall prepare and transmit to the council a quarterly report showing the number of detainers received and descriptive data that includes but is not limited to: the types of offenses that individuals with detainers were being held, the reason for release from county custody, the length of stay for each individual before the detainer was executed for those who were released from county custody, and the number of individuals that had detainers but were transferred to state department of corrections' custody. The reports called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole, and the law, justice, health and human services committee, or their successors.

E. The executive shall convene an immigration detainer oversight group to review the implementation of the county's limitations on immigration detainer requests as outlined in subsection A.1. of this section. The oversight group shall include but not be limited to: the executive or the executive's designee; the director of the department of public defense or the director's designee; the prosecuting attorney or the prosecuting attorney's designee; the presiding judge of the superior court or the presiding judge's designee; and two representatives appointed by the county council, one of whom shall be an immigrant's rights specialist and one of whom shall be a member of the King County Bar Association. The members of the oversight group shall be appointed by the executive and submitted to the council with a motion for confirmation. The executive shall convene this group by July 1, 2014, and, with the help of King County criminal justice agencies, provide this group with data on the detainers received by the county, criminal history information on the individuals for whom detainers were honored, data on the length-of-stay within county detention facilities for these individuals, and the outcome of the court case that resulted in the individual being detained that led to them being subject to a detainer. The executive shall also try to obtain data on the outcome of the individuals' immigration proceedings after the honoring of the detainer. The oversight group shall review this data to evaluate the impact of the limitations on detainers and also to determine if any changes are needed in the county's policies and develop a

report with the group's conclusions and recommendations. The executive shall also prepare a fiscal estimate of the cost of honoring federal detainees. The oversight group shall review this data to evaluate whether it continues to be appropriate for the county to honor any detainees or to cease honoring detainees as a county policy. The group shall also review the county's existing systems to make recommendations on how federal agents can use current information systems to identify when individuals will be released from county custody in order for federal agents to take appropriate enforcement actions upon release without the use of detainees or cost to the county. The group shall also review how the county could enhance its information systems to provide greater public notification of when individuals will be released from county custody.

By January 31, 2015, the executive shall prepare a report summarizing the data reviewed by the oversight group, include the report of the oversight group, and include the group's proposed recommendations for proposed changes to the county's policies. The executive shall transmit the report, supporting data, and recommendations to the clerk of the council. The report called for in this section shall be transmitted in the form of a paper original and an electronic copy to the clerk of the council, who shall distribute electronic copies to all councilmembers and the lead staff for the committee of the whole and the law, justice, health and human services committee, or their successors.