

ASSEMBLY BILL

No. 15

Introduced by Assembly Member Gipson
(Coauthors: Assembly Members Alvarez, Bonta, Connolly, Kalra,
Lee, and Ortega)

December 2, 2024

An act to add Section 7284.11 to the Government Code, and to repeal Sections 5025 and 5026 of the Penal Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 15, as introduced, Gipson. State government: immigration enforcement.

Existing law, the California Values Act, prohibits a California law enforcement agency, defined as including both state and local agencies but excluding the Department of Corrections and Rehabilitation, from providing a person's release date or responding to a request for notification of a release date, unless that information is available to the public.

The bill would prohibit the Department of Corrections and Rehabilitation from detaining on the basis of a hold request, providing an immigration authority with release date information, or responding to a notification request, transferring to an immigration authority, or facilitating or assisting with a transfer request any individual who is eligible for release pursuant to specified provisions, including, among others, youth offender, elderly, and medical parole releases.

Existing law requires the Department of Corrections and Rehabilitation to cooperate with the United States Department of Homeland Security by providing the use of prison facilities, transportation, and general support, as needed, for the purposes of

conducting and expediting deportation hearings and subsequent placement of deportation holds on undocumented immigrants who are incarcerated in state prison.

Existing law requires the department to identify inmates serving terms in state prison who are undocumented aliens subject to deportation. Existing law would require the department, upon the enactment of any federal law requiring these persons to be incarcerated in federal prison, to provide this information to the federal government, as specified.

This bill would repeal these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California's punitive carceral system unjustly and
4 disproportionately harms Black, Latinx, Indigenous, and Asian
5 and Pacific Islander American communities. The California prison
6 population peaked at more than 165,000 in 2006 in a system
7 designed to house just 85,000 individuals due to decades of
8 draconian laws that over-criminalized children of color, applied
9 one-size-fits-all sentencing laws, and provided little to no
10 opportunities for rehabilitated individuals to be considered for
11 release on parole by the Board of Parole Hearings.

12 (b) In recent years, the Legislature and California voters have
13 demonstrated a strong commitment to reforming our criminal
14 system and ending mass incarceration by enacting the following
15 landmark reforms. Through these reforms, certain incarcerated
16 individuals have the opportunity to be considered for resentencing
17 or release.

18 (c) With the passing of Senate Bill 260 of the 2013–14 Regular
19 Session of the Legislature, Senate Bill 261 of the 2015–2016
20 Regular Session of the Legislature, Senate Bill 394 of the 2017–18
21 Regular Session of the Legislature, and Assembly Bill 1308 of the
22 2017–2018 Regular Session of the Legislature, based on the brain
23 development of young people, the hallmark features of youth, and
24 the ability for incarcerated young people to grow and mature,
25 California created a parole process for people who were 25 years

1 of age or younger at the time of their commitment offenses, and
2 sentenced to life sentences or long determinate sentences.

3 (d) Through the elderly parole program, medical parole, and
4 compassionate release processes, California acknowledged
5 incarcerated populations who do not pose a threat to public safety
6 and provided opportunities to be considered for release based on
7 advanced age, fatal illness, or permanent incapacity.

8 (e) Through the enactment of both the California Racial Justice
9 Act of 2020, and the Racial Justice Act for All, the California
10 Legislature recognized discrimination in our criminal justice system
11 based on race, ethnicity, or national origin. The legislation created
12 an opportunity to challenge convictions and sentences sought,
13 obtained, or imposed on the basis of race, ethnicity, or national
14 origin.

15 (f) Acknowledging the injustice of convicting an individual of
16 murder even if they did not kill anyone or intend to kill anyone,
17 and that the felony murder legal theory has been weaponized to
18 impose harsh convictions and sentences on persons of color and
19 survivors of violence, the Legislature enacted Senate Bill 1437 of
20 the 2017–18 Regular Session of the Legislature, which placed
21 some limits on the legal basis for convicting someone of the crime
22 of murder.

23 (g) Recognizing that the relevant experiences of survivors of
24 human trafficking, intimate partner violence, and sexual violence
25 should be considered by courts when survivors come into contact
26 with the criminal system, the Legislature enacted Assembly Bill
27 124 of the 2021–22 Regular Session of the Legislature.

28 (h) Despite these reforms, when California’s jails and prisons
29 voluntarily and unnecessarily transfer immigrant and refugee
30 community members eligible for release from state or local custody
31 to Immigration and Customs Enforcement (ICE) for immigration
32 detention and deportation purposes, they subject these community
33 members to double punishment and further trauma. Immigrant
34 community members can be incarcerated by ICE, often for
35 prolonged periods and with no right to bail, and deported,
36 permanently banishing them from the country, from their families,
37 their homes, their livelihoods and “all that makes life worth living.”
38 *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). The Supreme
39 Court has repeatedly acknowledged that for many people
40 deportation is a more severe penalty than any jail sentence. See,

1 e.g., *Lee v. U.S.*, 137 S.Ct. 1958, 1968 (2017); *Padilla v. Kentucky*,
2 559 U.S. 356, 364 (2010).

3 (i) Community members transferred to ICE are refugees, lawful
4 permanent residents, people who entered the United States as
5 children, parents, caretakers, essential workers, or are otherwise
6 valued California residents. Ending ICE transfers in California for
7 individuals who have earned their release from county jail and
8 individuals released from the Department of Corrections and
9 Rehabilitation pursuant to the reforms described in subdivisions
10 (c) through (g) is a reflection of the state's commitment to ending
11 racial injustice and mass incarceration.

12 (j) The United States Constitution and the California
13 Constitution protect all persons present within our borders from
14 unreasonable searches and seizures, from deprivations of life,
15 liberty or property without due process of law, from being deprived
16 of equal protection under the law, including from being targeted
17 on the basis of race or ethnicity. This act embodies and protects
18 these values by ensuring that Californians, including refugees and
19 immigrants, are treated equally by laws passed to advance much
20 needed criminal justice reform. It is the intent of the Legislature
21 to ensure the right of equal treatment under the United States
22 Constitution, the California Constitution, and the above-referenced
23 criminal justice reforms, which has been conferred to all
24 immigrants and refugees in California.

25 (k) To ensure an equitable opportunity for noncarceral,
26 rehabilitative and diversionary dispositions or custody status to all
27 persons involved in the criminal legal system, irrespective of
28 immigration status, it is the intent of the Legislature to abrogate
29 case law that is inconsistent with this value, including, but not
30 limited to, *People v. Sanchez* (1987) 190 Cal.App.3d 224; *People*
31 *v. Cisneros* (2000) 84 Cal.App.4th 352; *People v. Espinoza* (2003)
32 107 Cal.App.4th 1069; *People v. Arce* (2017) 11 Cal.App.5th 613.

33 (l) This act shall be known, and may be cited, as the
34 Harmonizing our Measures for Equality (HOME) Act.

35 SEC. 2. Section 7284.11 is added to the Government Code, to
36 read:

37 7284.11. The Department of Corrections and Rehabilitation
38 shall not detain on the basis of a hold request, provide an
39 immigration authority with release date information, or respond
40 to a notification request, transfer to an immigration authority, or

1 facilitate or assist with a transfer request any individual who is
2 eligible for release pursuant to Section 1172.2, 3051, 3055, or 3550
3 of the Penal Code, released after resentencing pursuant to Section
4 1172.6 of the Penal Code, released after having a conviction and
5 sentence vacated, or a judgment modified, pursuant to Section 745
6 of the Penal Code, released after having a conviction and sentence
7 vacated, or a judgment modified, pursuant to Section 236.14 or
8 236.15 of the Penal Code, released after resentencing pursuant to
9 paragraph (8) of subdivision (d) of Section 1170 of the Penal Code,
10 or released after being granted clemency from the Governor.

11 SEC. 3. Section 5025 of the Penal Code, as amended by Section
12 5 of Chapter 565 of the Statutes of 1994, is repealed.

13 ~~5025. (a) On or before July 1, 1993, the Department of~~
14 ~~Corrections shall implement and maintain procedures to identify~~
15 ~~inmates serving terms in state prison who are undocumented aliens~~
16 ~~subject to deportation. This identification procedure shall be~~
17 ~~completed, as to each inmate, within 90 days of the Department~~
18 ~~of Corrections having taken custody of the inmate.~~

19 ~~(b) The procedures implemented by the department, pursuant~~
20 ~~to subdivision (a), shall include, but not be limited to, the following~~
21 ~~criteria for determining the country of citizenship of any person~~
22 ~~serving a term in state prison:~~

23 ~~(1) Country of citizenship.~~

24 ~~(2) Place of birth.~~

25 ~~(3) Inmate's statements.~~

26 ~~(4) Prior parole records.~~

27 ~~(5) Prior arrest records.~~

28 ~~(6) Probation Officer's Report (POR).~~

29 ~~(7) Information from the Department of Justice's Criminal~~
30 ~~Identification and Information Unit.~~

31 ~~(8) Other legal documents.~~

32 ~~(c) The Department of Corrections shall report annually to the~~
33 ~~Legislature the number of persons identified as undocumented~~
34 ~~aliens pursuant to subdivision (a). The reports shall contain the~~
35 ~~number of persons referred, the race, national origin, and national~~
36 ~~ancestry of persons referred, the offense or offenses for which the~~
37 ~~person was committed to state prison, and the disposition of the~~
38 ~~referral, if known.~~

39 SEC. 4. Section 5025 of the Penal Code, as amended by Section
40 49 of Chapter 296 of the Statutes of 2021, is repealed.

1 ~~5025. (a) Immediately upon the effective date of the~~
2 ~~amendments to this section made at the 1993-94 First~~
3 ~~Extraordinary Session of the Legislature, the Department of~~
4 ~~Corrections and Rehabilitation and the Department of Youth and~~
5 ~~Community Restoration shall implement and maintain procedures~~
6 ~~to identify, within 90 days of assuming custody, inmates serving~~
7 ~~terms in state prison or wards of the Department of Youth and~~
8 ~~Community Restoration who are undocumented felons subject to~~
9 ~~deportation. The Department of Corrections and Rehabilitation~~
10 ~~and the Department of Youth and Community Restoration shall~~
11 ~~refer to the United States Department of Homeland Security the~~
12 ~~name and location of any inmate or ward who may be an~~
13 ~~undocumented immigrant and who may be subject to deportation~~
14 ~~for a determination of whether the inmate or ward is undocumented~~
15 ~~and subject to deportation. The Department of Corrections and~~
16 ~~Rehabilitation and the Department of Youth and Community~~
17 ~~Restoration shall make case files available to the United States~~
18 ~~Department of Homeland Security for purposes of investigation.~~

19 ~~(b) The procedures implemented by the department pursuant to~~
20 ~~subdivision (a) shall include, but not be limited to, the following~~
21 ~~criteria for determining the country of citizenship of any person~~
22 ~~serving a term in the state prison:~~

- 23 ~~(1) Country of citizenship.~~
- 24 ~~(2) Place of birth.~~
- 25 ~~(3) Inmate's statements.~~
- 26 ~~(4) Prior parole records.~~
- 27 ~~(5) Prior arrest records.~~
- 28 ~~(6) Probation Officer's Report (POR).~~
- 29 ~~(7) Information from the Department of Justice's Criminal~~
30 ~~Identification and Information Unit.~~
- 31 ~~(8) Other legal documents.~~

32 ~~(c) Within 48 hours of identifying an inmate or ward as an~~
33 ~~undocumented felon pursuant to subdivision (a), the Department~~
34 ~~of Corrections and Rehabilitation and the Department of Youth~~
35 ~~and Community Restoration shall cause the inmate or ward to be~~
36 ~~transferred to the custody of the United States Attorney General~~
37 ~~for appropriate action. Once an inmate or ward has been identified~~
38 ~~as an undocumented felon by the United States Immigration and~~
39 ~~Naturalization Service, the inmate or ward shall not undergo any~~
40 ~~additional evaluation or classification procedures other than those~~

1 required for the safety or security of the institution, the inmate or
2 ward, or the public.

3 ~~(d) The Department of Corrections and Rehabilitation and the~~
4 ~~Department of Youth and Community Restoration shall report~~
5 ~~quarterly to the Legislature the number of persons referred to the~~
6 ~~United States Department of Homeland Security pursuant to~~
7 ~~subdivision (a). The report shall contain the number of persons~~
8 ~~transported, the race, national origin, and national ancestry of~~
9 ~~persons transported, the offense or offenses for which the persons~~
10 ~~were committed to state prison, and the facilities to which the~~
11 ~~persons were transported.~~

12 ~~(e) For purposes of this section, “immigrant” means a person~~
13 ~~who is not a citizen or national of the United States.~~

14 SEC. 5. Section 5026 of the Penal Code is repealed.

15 ~~5026. (a) The Department of Corrections and Rehabilitation~~
16 ~~and the Department of Youth and Community Restoration shall~~
17 ~~cooperate with the United States Department of Homeland Security~~
18 ~~by providing the use of prison facilities, transportation, and general~~
19 ~~support, as needed, for the purposes of conducting and expediting~~
20 ~~deportation hearings and subsequent placement of deportation~~
21 ~~holds on undocumented immigrants who are incarcerated in state~~
22 ~~prison.~~

23 ~~(b) For purposes of this section, “immigrant” means a person~~
24 ~~who is not a citizen or national of the United States.~~