August 27, 2014

Mr. E. Dotson Wilson, Chief Clerk
California State Assembly
State Capitol Building
Sacramento, CA 95814

Re: Letter of Intent for the Assembly Journal – AB 4: TRUST Act

Dear Mr. Wilson:

The purpose of this letter is to express my intent as the author of Assembly Bill 4, known as the TRUST Act.

The bill sets conditions that must be met before an individual may be detained by a law enforcement official on the basis of an immigration hold, also known as an "immigration detainer."

Since the intent of the bill is to restore trust between law enforcement and the communities they serve by limiting the situations in which individuals may be detained on the basis of immigration holds, it is my intent that wherever the bill language is ambiguous as to detention authority, detention is not authorized. Below, I discuss my intent with respect to specific provisions of the bill.

Detention on the basis of a criminal conviction

Section 7282.5(a)(2) of the bill permits detention only if an "individual has been convicted of a felony punishable by imprisonment in the state prison." It is my intent that this provision incorporates realignment standards. Thus, it applies only if the felony would be punishable in state prison as of October 5, 2013, the date of the TRUST Act's enactment. This is true regardless of the date of conviction.

Section 7282.5(a)(3) of the bill does not permit detention of an individual who has been convicted only of a "straight misdemeanor"—that is, a misdemeanor that can be charged only as a misdemeanor and not as a felony. Although several "straight misdemeanors" are enumerated in sub-sections (a)(3)(A)--(AE), convictions for these offenses do not authorize detention on the basis of an immigration hold. That is because these offenses are not "punishable as either a misdemeanor or a felony" as required under section 7282.5(a)(3). The enumerated straight misdemeanors that do not authorize detention under section 7282.5(a)(3) are as follows: Penal Code §§ 240; 242; 647.6(a) (first offense); 273a(b); 463(c); 74; 417(a) and (d); 26100(a); 404.6(b); 368(c); 653.23.

Finally, in section 7282.5(a)(3)(M) of the bill, I intend the word "felony" to modify the entire clause. Accordingly, only convictions for felony possession, felony sale, felony distribution, felony manufacture, or felony trafficking of controlled substances are

included. Convictions for misdemeanors or wobbler offenses are outside the scope of § 7282.5(a)(3)(M).

Definition of conviction

It is my intent that the definition of conviction in § 7282(a) applies only to serious and violent felony convictions. The definition does not limit the bill's application to individuals convicted of non-serious and/or non-violent offenses. Regardless of the type of offense, any conviction that has been expunged or dismissed under Cal. Penal Code § 1203.4 does not constitute a conviction under the bill.

Detention on the basis of a pending criminal charge

Section 7282.5(a)(5) of the bill permits detention on the basis of an immigration hold only after a magistrate judge has made a probable cause determination pursuant to California Penal Code § 872. An individual who is awaiting, but has not yet received, a § 872 probable cause determination does not fall within the scope of section 7282.5(a)(5). Section 7282.5(a)(5) also does not permit the detention of an individual who has waived his or her right to a § 872 probable cause determination because such a waiver does not constitute a probable cause finding by a judge. Individuals in these situations may be eligible for release on bail or otherwise. Because these individuals may not be detained on immigration holds, the existence of a hold should not affect their eligibility for release.

In addition, Section 7282.5(a)(5) does not permit detention for individuals who have been charged with, but not convicted of, felony driving under the influence. Pursuant to section 7282.5(a)(3)(G), the felony offense of driving under the influence may justify detention on the basis of an immigration hold only where there has been a conviction.

Applicability to juveniles

I intend the bill's protections against immigration hold requests to apply to juveniles booked and held in juvenile detention facilities. However, I do not intend the word "conviction" as used in the bill to include juvenile adjudications that result in a sustained petition. The one exception is for a juvenile adjudication for an offense that was committed when the juvenile was sixteen or older and that is listed in Welfare & Institutions Code § 707(b). *See* PC § 667(d)(3) (defining serious and violent felonies with respect to juvenile adjudications) It is my intent that such a juvenile adjudication constitutes a conviction under the bill, but these are the only cases in which a juvenile adjudication can serve as the basis for responding to an immigration hold request.

Interaction with other laws and policies

This bill does not permit any detention on the basis of an immigration hold where such detention would otherwise violate federal, state, or local laws or local policies, including where such detention would violate the Fourth Amendment of the United State Constitution as discussed in *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317

(D. Ore. April 11, 2014). The bill creates a floor, not a ceiling. Other bodies, including local agencies, are free to pass policies that go further in limiting compliance with immigration holds; and in these cases, the local policies will control.

Sincerely,

TOM AMMIANO
Member, 13th Assembly District