
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair
2017 - 2018 Regular

Bill No: AB 21 **Hearing Date:** June 28, 2017
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Urgency: No **Fiscal:** Yes
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Subject: Public postsecondary education: Access to Higher Education for Every Student

NOTE: This bill has been referred to the Committees on Education and *Judiciary*. A "do pass" motion should include referral to the Committee on *Judiciary*.

SUMMARY

This bill requires the California State University, California Community Colleges and each Cal Grant eligible independent institution of higher education and requests the University of California to establish various policies and actions to be implemented by postsecondary institutions in California that safeguard against immigration enforcement activities on campuses.

BACKGROUND

Existing law:

Federal law.

- 1) On June 15, 2012, the Secretary of Homeland Security, under the direction of President Obama, announced the Deferred Action for Childhood Arrivals (DACA) policy, authorizing certain people who came to the United States as children and meet several guidelines to request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status. Individuals may request consideration of DACA if they meet all of the following requirements:
 - Were under the age of 31 as of June 15, 2012;
 - Came to the United States before their 16th birthday;
 - Have continuously resided in the United States since June 15, 2007, up to the present time;
 - Were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action;

- Had no lawful status on June 15, 2012, meaning never had a lawful immigration status on or before June 15, 2012, or any lawful immigration status or parole obtained prior to June 15, 2012, that had expired as of June 15, 2012;
 - Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and,
 - Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.
- 2) Provides that any authorized immigration officer may at any time issue Immigration Detainer-Notice of Action, to any other federal, state, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department of Homeland Security (DHS) 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 DHS, prior to release of the alien, in order for the DHS to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible (8 Code of Federal Regulations (CFR) § 287.7(a)).
 - 3) States that upon a determination by the DHS to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the DHS (8 CFR § 287.7(d)).
 - 4) Authorizes the Secretary of Homeland Security under the 287(g) program to enter into agreements that delegate immigration powers to local police. The negotiated agreements between Immigration and Customs Enforcement (ICE) and the local police are documented in memorandum of agreements (8 United States Code (U.S.C.) § 1357(g)).
 - 5) States that notwithstanding any other provision of Federal, State or local law, a Federal, State or local government entity or official may not prohibit, or in any way restrict any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service (INS) information regarding the citizenship or immigration status, lawful or unlawful of any individual (8 U.S.C. § 1373(a)).
 - 6) States that notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the INS information regarding the immigration status, lawful or unlawful, of an alien in the United States (8 U.S.C. § 1644).
 - 7) Provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S.C. 14th Amendment).

State law.

- 1) Establishes the Donahoe Higher Education Act, setting forth the mission of the University of California (UC), California State University (CSU), and California Community Colleges (CCC); and, defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in California and are accredited by an agency recognized by the United States Department of Education (Education Code (EC) § 66010, et seq.).
- 2) Requires the CCC Board of Governors (BOG) to provide leadership and direction in the continuing development of the CCC as an integral and effective element in the structure of public higher education in the state; and, requires that the work of the BOG shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the CCCs (EC § 70901).
- 3) Grants CSU Trustees regulatory authority over the CSU (EC § 89030, et seq.).
- 4) Grants the UC Regents regulatory authority over the UC (EC § 92440, et seq.).
- 5) Established by AB 540, (Firebaugh, Chapter 814, Statutes of 2001) exempts specified California nonresidents from paying nonresident tuition at the UC, CSU, and the CCC if they meet certain requirements. (EC § 68130.5)
- 6) Provides that AB 540 students are eligible to apply for, and participate in, any student financial aid program administered by the State of California to the full extent permitted by federal law and are eligible to receive a scholarship derived from non-state funds, for purposes of scholarships, by the segment at which he or she is a student. (EC § 69508.5 and 66021.7)
- 7) Defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests the law enforcement official to maintain custody of the individual for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays, and to advise the authorized immigration officer prior to the release of that individual" (Government Code (GOV) § 7282 (c)).
- 8) Provides that a law enforcement official has the discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy and only under specified circumstances (GOV § 7282.5).

- 9) Provides that, before any interview between Immigration and Customs Enforcement (ICE) and an individual in local law enforcement custody regarding civil violations, law enforcement must provide the individual with specified information, and requires specified notification to the individual if law enforcement intends to comply with an ICE hold or notify ICE that the individual is being released (GOV § 7283.1).

ANALYSIS

This bill:

- 1) Requires the California State University (CSU), California Community Colleges (CCC) and each Cal Grant eligible independent institution of higher education and requests the University of California (UC) to do all of the following to the fullest extent consistent with federal law:
 - a) Refrain from releasing personally identifiable information as specified.
 - b) Advise all students, and require each member of the faculty and staff:
 - i) To immediately notify the campus chancellor or president if he or she is advised that public or law enforcement entities are expected to enter, will enter, or have entered the campus to execute a federal immigration order.
 - ii) Responding to or having contact with a representative of a public or law enforcement entity executing a federal immigration order, to promptly refer the entity or individual to the campus chancellor or president for purposes of verifying the legality of any warrant or subpoena.
 - c) Prohibits students, faculty, or staff from being subject to administrative or academic discipline for responding to a federal immigration order for complying with the provisions in this bill.
 - d) Assign one or more staff person(s) to serve as a point of contact for any student, faculty or staff person who may be subject to an immigration order or inquiry on campus.
 - e) Solicit and maintain a contact list of known attorneys or legal services providers who offer pro bono legal immigration representation, as specified.
 - f) Pursuant to California Values Act SB 54 (De Leon, 2017) adopt and implement a policy limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law including providing guidance to all faculty, staff and students informing them of their rights under state or federal law and how to respond to federal immigration action or order.
 - g) In the event that a student who is eligible for the exemption from

nonresident tuition (i.e. AB 540 student) is subject to a federal immigration order, ensure that both of the following occur:

- i) Retention of that student's eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits they have been awarded or received and are permitted to be reenrolled if and when students are able to return to college or university.
 - ii) That staff is available to assist, in a sensitive manner students, faculty and staff who may be subject to a federal immigration order or inquiry or who may face similar issues and whose education or employment is at risk because of federal immigration action.
- 2) Declares the Legislature's intent to appropriate funds through the Budget Act of 2017 for proposes of this bill.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "with great risks of changes to immigration policies and enforcement at the federal level, it is more important than ever to protect students attending California's colleges and universities from scrupulous and unfair immigration actions. In order to ensure that all students, regardless of their immigration status, may continue to take advantage of the education to which they are entitled, free from intimidation or risk of a loss of access to resources and programs that other students enjoy, legislative action is needed."

This bill seeks to establish minimum protections for students, faculty and staff that will mitigate the impacts of potential immigration enforcement activities by requiring public and independent postsecondary institutions to put in place various policies and procedures for when law enforcement entities enter campus.

- 2) ***Related activity by each segment.*** The state has demonstrated a willingness to invest in undocumented students by qualifying them for state aid programs, resident tuition, among other things. In addition to these policies, enactment of federal Deferred Action for Childhood Arrivals (DACA) under the Obama administration made college graduation more attainable for undocumented students in California. Earlier this year, the new Trump administration issued two executive orders with regard to increased border security and stricter enforcement of immigration laws. These actions at the federal level regarding immigration enforcement activity have put vulnerable college students on edge. In response, the leaders of California's public postsecondary institutions made statements and implemented policies to address growing concerns on campus. Existing practices and recent policies implemented by higher education institutions include the following:

University of California (UC)

- University of California (UC) welcomes and supports students without regard to their immigration status. The UC recently issued its statement of principles reaffirming its commitment to vigorously protect the privacy and civil rights of all UC undocumented students and all members of their community.

Many UC campuses are working to empower faculty and staff with the knowledge and skills required to create safe spaces for undocumented students. For instance, the systemwide UndocuAlly program trains faculty and staff to understand the history, legislation, and current and future realities of undocumented students. Every UC campus has at least one person on staff who can answer the questions of its undocumented students and provide guidance. Additionally, the UC continues to remind their students that their privacy is protected by law.

California State University (CSU)

- The CSU recently issued systemwide guidance and principles in order to address its relationship and/or involvement with immigration enforcement officials. The policy guidelines are intended to remove the CSU from the enforcement of federal immigration laws. This includes not entering into agreements with law enforcement agencies for the purpose of enforcing federal immigration laws. The CSU advised the campus community to contact University Police should officials enter campus requesting information regarding immigration status who would coordinate with the Office of General Counsel to provide guidance, references and resources as available. In a recent memo to the CSU community, Chancellor White stated CSU's commitment to continue to make every lawful effort to provide a safe and welcoming campus environment for all students, faculty and staff and members of the CSU community.

California Community Colleges (CCC)

- The CCC Office of the Chancellor also recently issued guidance and principles to its system of 113 colleges in order to address uncertainty over possible immigration policy changes. The guidance and principles, among others, specify that community college district police departments should not detain, question or arrest any individual solely on the basis of suspected undocumented immigration status; and, no confidential student records should be released without a judicial warrant, subpoena or court order, unless authorized by the student or required by law. The Chancellor's office has reassured students and colleges that campuses will remain safe, welcoming places for students of all backgrounds to learn.

Additionally, the CCC Chancellor, UC President and CSU Chancellor in a joint letter called upon President Trump to preserve Deferred Action for Childhood Arrivals (DACA) and defend the right of all students to obtain a higher education in California.

Independent Colleges and Universities

- The Association of Independent California Colleges and Universities conducted two immigration symposiums for the leadership of the various independent colleges and universities. The symposiums, conducted in March of this year, were successful in building and fostering support networks around immigrant communities.

These actions taken by California higher education institutions appear to be consistent with intent of this bill. However, concerns have been raised relating to what is permissible under state authority and that of federal authority should this bill be approved. This bill specifies that postsecondary institutions comply with the proposed provisions to the fullest extent consistent with federal law. Staff notes the author's office continues to work with higher education institutions to address some of those concerns.

- 3) ***Deferred Action for Childhood Arrivals (DACA) /AB 540 Students.*** State law established by AB 540, exempts certain students who meet the eligibility requirements noted in the background of this analysis from paying nonresident tuition. Students who meet the exemption requirements may apply for state-administered financial aid such as grants and fee waivers. In contrast, DACA is a federal process that defers removal action of an individual for a specified number years. Specifically, it allows people who came to the United States as children and meet several guidelines to request consideration of deferred action for a period of two years, subject to renewal. It also allows those who are eligible to have work authorization. A person can be eligible for both the exemption established by AB 540 and DACA status or just either one (i.e. AB 540 students with DACA status, AB 540 only or DACA only).
- 4) ***Return rights.*** Should a student be deported or detained this bill seeks to make that student whole by preserving his or her eligibility for benefits provided prior to the deportation or detainment and upon return to the college or university. These provisions apply to a student who is eligible for AB 540 eligibility and it appears that an AB 540 student with or without DACA status may participate. The proposed benefit is available to a qualifying student, regardless of the length of time the student has been detained or separated from the U.S. following deportation. Presumably, a student may return at any point in time to receive aid that may no longer be available in the future.

To all colleges and universities some flexibility in this area, ***staff recommends the bill be amended as follows:***

66093.3 (g)(1) In the event that students to whom Section 68130.5 is applicable are detained, deported, or are unable to attend to their academic requirements due to the actions of a public law enforcement agency, federal immigration and customs enforcement, or other public entity in relation to a federal immigration order, ***to the greatest extent possible,*** they retain any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits they have been awarded or received and are permitted to be reenrolled if and when students are able to return to the college or university. It is the intent of the Legislature that in implementing this paragraph California colleges and

universities make every effort to provide for a seamless transition in a student's reenrollment and reacquisition of campus services and supports.

- 5) ***Double referral.*** As noted at the top of this analysis, this bill has been referred to the Committees on Education and Judiciary. The committee on Judiciary will examine the provisions under its jurisdiction including issues related to privacy.
- 6) ***Related legislation***

AB 291 (Chiu, et al., 2017) in part, prohibits a lessor from threatening to disclose information regarding or relating to the perceived immigration or citizenship status of a tenant, occupant, or other person associated with a tenant or occupant for the purpose of influencing a tenant to vacate a dwelling; and, prohibit a lessor, or an agent of a lessor, from disclosing to any person or entity information regarding or relating to the immigration or citizenship status of any tenant, prospective tenant, occupant, or prospective occupant of the rental property. AB 291 is pending on the Senate Floor.

SB 6 (Hueso, 2017) in part, appropriates \$12 million to the California Department of Social Services (CDSS) to establish the Due Process for All Act to provide legal services to individuals facing deportation; and, would authorize CDSS to contract with qualified nonprofit legal services organizations and nonprofit agencies to implement the act. SB 6 is pending hearing on in the Assembly Judiciary Committee.

SB 31 (Lara, 2017) in part, directs California state and local governments to refrain from initiating, participating in, or assisting with any program to create a religious list, registry, or database, or using information about individuals' national origin or ethnicity to achieve the same basic purpose. SB 31 is pending in the Assembly Appropriations Committee.

SB 54 (De León, 2017) limits state and local law enforcement agencies, including school police, involvement in immigration enforcement and ensures that eligible individuals are able to seek services from and engage with state agencies without regard to their immigration status. SB 54 is pending hearing in the Assembly Judiciary Committee.

SUPPORT

Alliance for Boys and Men of Color
 California Faculty Association
 California Immigrant Policy Center
 California Labor Federation
 California State Student Association
 CaliforniaHealth+Advocates
 National Association of Social Workers, California Chapter
 Southeast Asia Resource Action Center

OPPOSITION

None received

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