
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 429 **Hearing Date:** April 9, 2019
Author: Nielsen
Version: April 2, 2019
Urgency: No **Fiscal:** Yes
Consultant: JK

Subject: *Law Enforcement: Cooperation with Federal Immigration Authorities*

HISTORY

Source: Author

Prior Legislation: AB 2984 (Limon), 2018, failed in Assembly Public Safety
SB 1219 (Gaines), 2018, failed in Senate Public Safety
SB 54 (De Leon), Ch. 495, Stats. 2017
AB 1252 (Allen), 2017, failed passage in Assembly Public Safety
AB 298 (Gallagher), 2017, failed in Assembly Public Safety
AB 4 (Ammiano), 2013, Ch. 570, Stats. 2013
AB 1081 (Ammiano), 2011, Vetoed by Governor

Support: Unknown

Opposition: ACCESS Women's Health Justice; American Civil Liberties Union of California; Asian Americans Advancing Justice; Alameda County Public Defenders; Alianza; Alliance San Diego; California Immigrant Policy Center; California Public Defenders Association; California Rural Legal Assistance Foundation; California Voices for Progress; Center for Gender and Refugee Studies; Coalition for Humane Immigrant Rights; Community Legal Services in East Palo Alto; Dolores Street Community Services; Drug Policy Alliance; Ella Baker Center for Human Rights; Immigrant Legal Resource Center; Initiate Justice; The Jus Semper Global Alliance; Legal Services for Children; Legal Services for Prisoners with Children; NorCal Resist; Oakland Privacy; Orange County Rapid Response Network; Pangea Legal Services; Resilience Orange County; Root and Rebound; San Diego Immigrant Rights Consortium; San Diego Rapid Response Network; South Bay People Power; Ventura County Clergy and Laity United for Economic Justice; Western Center on Law and Poverty; Women For: Orange County; multiple individuals

PURPOSE

The purpose of this bill is to grant a law enforcement official or agency discretion to cooperate with federal immigration authorities to apprehend an individual who is unlawfully in the United States if the individual has been convicted of driving under the influence and an active warrant has been issued for the individual's arrest for failure to appear to face charges of driving under the influence.

Existing law states that a law enforcement official shall have discretion to cooperate with immigration authorities, only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act, under the circumstance of driving under the influence of alcohol or drugs, but only for a conviction that is a felony. (Gov. Code § 7282.5 (a)(3)(G).)

Existing law establishes the California Values Act. (Gov. Code, § 7284.)

Existing law establishes that California law enforcement agencies shall not use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

- Inquiring into an individual's immigration status.
- Detaining an individual on the basis of a hold request.
- Providing information regarding a person's release date or responding to requests for notification of release dates or other information unless that information is available to the public, or is in response to a notification request from immigration authorities.
- Providing personal information.
- Making or intentionally participating in arrests based on civil immigration warrants.
- Assisting immigration authorities.
- Performing the functions of an immigration officer. (Gov. Code, § 7284.6 (a)(1)(A)-(G).)

Existing law states that California law enforcement shall not place peace officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal deputies for purposes of immigration enforcement. All peace officers remain subject to California law governing conduct of peace officers and the policies employing agency. (Gov. Code, § 7284.6 (a)(2).)

Existing law states that California law enforcement shall not use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody. (Gov. Code, § 7284.6 (a)(3).)

Existing law states that California law enforcement shall not transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination. (Gov. Code, § 7284.6 (a)(4).)

Existing law states that California law enforcement shall not provide office space exclusively dedicated for immigration authorities for use within a city or county law enforcement facility. (Gov. Code, § 7284.6 (a)(5).)

Existing law states that California law enforcement shall not contract with the federal government for use of California law enforcement agency facilities to house individuals as federal detainees for purposes of civil immigration custody. (Gov. Code, § 7284.6 (a)(6).)

Existing law states that this section does not prevent any California law enforcement agency from any of the following:

- Investigating, enforcing, or detaining upon reasonable suspicion of reentry of removed aliens.

- Responding to a request from immigration authorities for information about a specific person's criminal history.
- Conducting enforcement or investigative duties associated with a joint law enforcement task force.
- Making inquiries into information necessary to certify an individual who have been identified as a potential crime or trafficking victim for a T or U Visa.
- Giving immigration authorities access to interview an individual in agency or department custody. (Gov. Code, § 7284.6 (b)(1)-(5).)

Existing law provides that Law Enforcement Agencies (LEAs) are able to participate in joint taskforces with the federal government only if the primary purpose of the joint task force is not immigration enforcement. Participating agencies must annually report to the California Department of Justice (DOJ) if there were immigration arrests as a result of task force operations. (Gov. Code, § 7284.6, subds. (b) & (c).)

Existing law declares that the Department of Corrections and Rehabilitation shall in advance of any interview between the United States Immigration and Customs Enforcement (ICE) and an individual in department custody regarding civil immigration violations, provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present. The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. (Gov. Code, § 7284.10 (a)(1).)

Existing law states that it is unlawful for a person who is under the influence of any alcoholic beverage, of any drug, or under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Vehicle Code, § 23152 (a)(f)(g).)

Existing law prohibits a person who is under the influence of any alcoholic beverage, of any drug, or under the combined influence of any alcoholic beverage and drug to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. (Vehicle Code, § 23153 (a)(f)(g).)

Existing federal law prohibits the federal government from "conscripting" the states to enforce federal regulatory programs. (U.S. Const. Tenth Amend.)

Existing federal law 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 CFR § 287.7(a).)

Existing federal law 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).)

Existing federal law authorizes the Secretary of DHS to enter into agreements that delegate immigration powers to local police. The negotiated agreements between ICE and the local police are documented in memorandum of agreements (MOAs). (8 U.S.C. § 1357(g).)

This bill states that, unless prohibited by federal law or the California Constitution, a law enforcement official or agency has discretion to cooperate with federal immigration authorities regarding an individual who is unlawfully in the United States if the individual has been convicted of driving under the influence of alcohol or drugs.

COMMENTS

1. Need for This Bill

This bill seeks clarification to answer whether a local law enforcement agency can communicate with ICE when an illegal immigrant has been convicted for DUI and has an active warrant out for their arrest.

Since the passage of SB 54 in 2017, there has been confusion on when it is appropriate for law enforcement agencies to share information or otherwise cooperate with federal immigration authorities regarding illegal immigrants in the state. In December of 2018, Police Corporal Ronil Singh (a naturalized citizen) of the City of Newman Police Department was murdered by illegal immigrant, Gustavo Perez Arriaga during a routine traffic stop. At the time, Arriaga had an outstanding warrant for his arrest related to a DUI charge from 2014. He also had a history of prior arrest for DUI, including a charge for causing physical injury to another person while driving under the influence.

2. California Values Act

The Values Act, which became effective on January 1, 2018, limits the involvement of state and local law enforcement agencies (LEAs) in federal immigration enforcement. It prohibits LEAs (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. It also places limitations on the ways in which LEAs can collaborate with immigration authorities.

The Values Act is an expansion of prior state law, the TRUST Act which prohibited law enforcement from honoring federal immigration holds unless the detainee had a criminal history involving a serious or violent felony.

3. DUIs and Immigration

On January 25, 2017, President Donald Trump signed Executive Order 13768, titled “Enhancing Public Safety in the Interior of the United States.” The executive order vastly expanded the proportion of the immigrant population who face potential risk of deportation. The order prioritizes removal of aliens who: are convicted of *any* criminal offense; are charged with *any* criminal offense; and commit acts that constitute a chargeable offense.¹ In 2017, there was a 30% increase in ICE arrests, with the number of arrestees *without* known convictions rising 146%. There was only a 12% increase in arrestees with past criminal convictions and DUIs were the

¹ <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>

most common criminal conviction. In total, 80,547 ICE arrestees were convicted or are pending charges from a DUI.²

Under existing California law, felony DUIs are the only DUIs that would warrant an LEA to cooperate with immigration authorities. However, arrests and convictions are public record, which could allow ICE to locate a specific person. In most cases, ICE takes custody of people with prior local and state convictions. California has one of the highest undocumented immigrant populations and after Executive Order 13768 California saw the highest increase in non-prior criminal conviction arrests.³ Considering the high number of DUI related ICE arrests and the increase in ICE arrests in California, this bill has the potential of greatly increasing ICE arrests in California. In recent years, the Legislature has passed legislation narrowing the circumstances which California LEAs can cooperate with immigration authorities; SB 429 would diverge from this direction.

4. Arguments in Opposition

According to the Alameda County Public Defender's Office:

In our office, we daily witness the devastating impact of current detention and deportation laws and policies on individuals, families, and communities in Alameda County and beyond. SB 54 already contains a long list of convictions and charges that exempt individuals from its protections. SB 429 adds misdemeanor driving under the influence to that list of exceptions, regardless of when the conviction took place. As such, cooperation between local authorities and ICE could be based on decades-old convictions, without any recognition of a person's rehabilitation and changed life circumstances. This does not align with California's common-sense criminal justice reforms.

According to the Immigrants Legal Resource Center:

Moreover, SB 429 (Nielsen) injects unnecessary confusion into a highly technical intersection of state criminal law and federal immigration law. First, the term "cooperation" is broad, vague, and undefined. Consequently, it could encompass conduct beyond what is regulated under current law: transfers and notifications in cases involving certain predicate convictions and charges. Second, SB 429 (Nielsen) ties cooperation to the person being unlawfully present in the country. Lawful presence can require complex legal analysis that is beyond the scope and knowledge of a local officer. California law explicitly bars local officers from inquiring into immigration status. SB 429 (Nielsen) negates this critical provision, which was adopted to address racial profiling, inaccurate assessments, and harassment of communities of color based on perceived immigration status. Third, SB 429 (Nielsen) fails to provide the requisite specificity regarding the term "active warrant." The bill lacks clarity on whether this means a state criminal warrant in California or another state, a federal criminal warrant, or a federal immigration warrant. The failure to specify the underlying offense for the warrant could lead to expansive interpretations, for example, including situations where a warrant was issued for failure to appear on a minor traffic offense.

-- END --

² <https://www.pewresearch.org/fact-tank/2018/02/15/most-immigrants-arrested-by-ice-have-prior-criminal-convictions-a-big-change-from-2009/>

³ Ibid