
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 54 **Hearing Date:** January 31, 2017
Author: De León
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Urgency: Yes **Fiscal:** Yes
Consultant: MK

Subject: *Law Enforcement: sharing data*

HISTORY

Source: Author

Prior Legislation: AB 2792 (Bonta) – Chapter 768, Stats. 2016
AB 4 (Ammiano) – Chapter 570, Stats. 2013
AB 524 (Mullin) – Chapter 572, Stats. 2013

Support: Abriendo Puerta/Opening Doors; Alliance for Boys and Men of Color; Alliance San Diego; American Academy of Pediatrics, California; American Civil Liberties Union; Asian Americans Advancing Justice-California; Asian American Criminal Trial Lawyers Association; Asian Law Alliance; ASPIRE; Bill Wilson Center; California Adolescent Health Collaborative; California Association for Bilingual Education; California Central Valley Journey for Justice; California College and University Police Chiefs Association; California Federation of Teachers (CFT), AFL-CIO; California La Raza Lawyers Association; California Partnership to End Domestic Violence; Californians for Justice Education Fund; Californians Together Coalition; Center for Gender and Refugee Studies; Central American Resource Center-Los Angeles; Centro Laboral de Graton; Children’s Defense Fund-CA; Courage Campaign; CREDO; Equality California; Esperanza Immigrant Rights Project of Catholic Charities of Los Angeles; Evergreen Teachers Association; Faith in the Valley; Filipino Youth Coalition; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Inland Coalition for Immigrant Justice; Inland Empire Immigrant Youth Coalition; Koreatown Immigrant Workers Alliance; La Raza Roundtable de California; Latino and Latina Roundtable; Latino Coalition for a Healthy California; Loyola Immigrant Justice Clinic; Mexican American Legal Defense and Educational Fund; Mi Familia Vota; Mixteco/Indigena Community Organizing Project; Monument Impact; Muslim Student Association West; National Lawyers Guild, Los Angeles; North County Immigration Task Force of San Diego; National Council of Jewish Women California; National Day Laborer Organizing Network; National Immigration Law Center; Nikkei for Civil Rights and Redress; Nikkei Progressives; Orange County Immigrant Youth United; Our Family Coalition; Pangea Legal Services; PolicyLink; RISE San Luis Obispo; San Diego Dream Team; San Diego Immigrant Rights Consortium; San Diego La Raza Lawyers Association; San Joaquin Immigrant Youth Collective; Santa Cruz County Immigration Project; Services, Immigrant Rights, and Education Network; SEIU California; SEIU Local 1021; Somos Mayfair; South Asian

Network; Tongan American Youth Foundation; The Children's Partnership; Training Occupational Development Educating Communities Legal Center; UNITE HERE; UPLIFT; Village Connect, Inc.; Voices for Progress Education Fund; Warehouse Worker Resource Center; Western Center on Law And Poverty; YWCA Glendale; one individual

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this bill is to limit state and local law enforcement agencies involvement in immigration enforcement and to ensure that eligible individuals are able to seek services from and engage with state agencies without regard to their immigration status.

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 Section 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 Section 287.7(d).)

Existing federal law 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 (MOAs). (8 U.S.C. Section 1357(g).)

Existing federal law 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 information regarding the citizenship or immigration status, lawful or unlawful of any individual. (8 US Code §1373(a))

Existing federal law 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 Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States. (8US Code § 1644)

Existing federal law 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. Const. 14th Amend.)

Existing law defines "immigration hold" as "an immigration detainer issued by an authorized immigration officer, pursuant to specified regulations, that requests that 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, § 7282 (c).)

Existing law provides that a law enforcement official have 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 in 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. (Government Code § 7282.5)

Existing law provides that before any interview between 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. (Government Code § 7283.1)

Existing law provides that where there is reason to believe that a person arrested for specified controlled substance related offenses may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters. (Health and Safety Code § 11369)

This bill repeals Health and Safety Code § 11369.

This bill prohibits state and local law enforcement agencies and school police and security departments from using agency or department money, facility, property, equipment or personnel to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes, including but not limited to any of the following:

- Inquiring into or collecting information about an individual's immigration status.
- Detaining an individual on the basis of a hold request.
- Responding to notification or transfer requests.
- Providing, or responding to requests for, nonpublicly available personal information about an individual, including, but not limited to, information about the person's release date, home address, or work address for immigration enforcement purposes.
- Making arrests based on civil immigration warrants.
- Giving federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes.
- Assisting federal immigration in conducting a search of a vehicle without a warrant.
- Performing the functions of an immigration officer, whether formal or informal.

This bill prohibits any state local law enforcement agencies and school police and security departments from making agency or department databases, including databases maintained for the agency or department by private vendors, or the information therein other than information regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement. It further provides that any agreements in place on the effective date of this bill that are in conflict with the bill shall be terminated on the effective date of the bill. Any person or entity provided access to agency or department databases must certify in writing that the database will not be used for the prohibited purposes.

This bill prohibits state and local law enforcement agencies and school police and security department from placing peace officers under the supervision of a federal agencies or employing peace officers deputized as special federal officers or special federal deputies except to the extent those peace officers remain subject to California law governing conduct of peace officers and the polices of the employing agency.

This bill provides that nothing in this section shall prevent the department or any state or local law enforcement agency, including school police or security departments, from responding to a request from federal immigration authorities for information about a specific person's previous criminal arrests or convictions where otherwise permitted by state law.

This bill provides that notwithstanding any other law, in no event shall state or local law enforcement agencies or school police or security departments transfer an individual to federal immigration authorities for the purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for the purposes of immigration enforcement absent a judicial warrant.

This bill provides that in order to ensure that eligible individuals are not deterred from seeking services or engaging with state agencies, within six month of the effective date of this bill, all state agencies shall review their confidentiality polices and identify any changes necessary to ensure that information collected from individuals is necessary to perform agency duties and is not used or disclosed for any other purpose.

This bill provides that within three months after this bill goes into effect, the Attorney General shall publish model contractual provisions for all state agencies that partner with private vendors for data collection purposes to ensure that such vendors comply with the confidentiality policies established pursuant to this bill.

This bill provides that within three months after this bill goes into effect, the Attorney General, in consultation with the appropriate stakeholders, shall publish model policies limiting immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, health facilities operated by the state or a political subdivision of the state, courthouses, and shelters to ensure that they remain safe and accessible to all California residents regardless of immigration status.

This bill provides that all public schools, health facilities operated by the state, and courthouses shall implement the model policy or an equivalent policy.

This bill provides that all other organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice, including the University of California are encouraged to adopt the model policy.

This bill provides that nothing in the bill prohibits or restricts any state government entity or official from sending to, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful.

This bill provides that provisions of the act are severable.

This bill makes Legislative findings and declarations.

This bill defines terms for the purpose of the Chapter created by this bill.

This bill provides that the Chapter it creates shall be known as the California Values Act.

COMMENTS

1. Need for the Bill

According to the author:

The purpose of this bill is to protect the safety and well-being of all Californians by ensuring that state and local resources are not used to fuel mass deportations, separate families, and ultimately hurt California's economy.

The President has stated publicly that he will order the increased deportation of a broad category of immigrants and that doing so will be a top priority. Any expansion of federal deportation efforts will have a significant effect on California's economy and society.

A relationship of trust between California's immigrant residents and our state and local agencies, including police, schools, and hospitals, is essential to carrying out basic state and local functions. That trust is threatened when state and local agencies are involved in immigration enforcement.

According to the President Obama's Taskforce on 21st Century Policing, "immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement. At all levels of government, it is important that laws, policies, and practices not hinder the ability of local law enforcement to build the strong relationships necessary to public safety and community well-being. It is the view of this task force that whenever possible, state and local law enforcement should not be involved in immigration enforcement."¹ A study conducted by the University of Illinois similarly found that 44 percent of Latinos are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire about their immigration status or that of people they know.²

California is already familiar with the harmful effects of entangling local law enforcement agencies with immigration enforcement. Prior to its termination, the discredited "Secure Communities" program (S-Comm) operated in California as an indiscriminate mass deportation program at great cost to California both financially and otherwise. According to a report prepared by Justice Strategies in 2012, when the Secure Communities program was still active, California taxpayers spent an estimated \$65 million annually to detain people for ICE.³

¹ Final Report of the President's Taskforce on 21st Century Policing (May 2016).

² Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, Nik Theodore, Dep't of Urban Planning and Policy, University of Illinois at Chicago (May 2013)

³ See Judith Greene, "The Cost of Responding to Immigration Detainers in California," Justice Strategies Report, August 22, 2012.

For that reason, it is necessary to evaluate the appropriate use of state and local resources for immigration enforcement purposes and recognize the devastating impact deportations have on a state with thousands of mixed status families, and a heavily immigrant workforce.

2. Prohibition on use of Property, Equipment etc. to Assist in Immigration Enforcement

This bill prohibits state and local agencies and school police and security departments from using money, facilities, property, equipment or personnel to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes. The prohibited actions include: inquiring into or collecting information about an individual's immigration status; detaining an individual on the basis of an immigration hold; responding to notification or transfer requests; providing or responding to requests, for personal information that is not otherwise public; making arrest based on civil immigration warrants; giving federal immigration authorities to access to interview individuals in agency or department custody for immigration enforcement purposes; and, performing the functions of an immigration officer.

3. No Sharing of Databases

This bill prohibits any state or local law enforcement agency and school police and security departments from making any databases or the information therein other than information regarding an individual's citizenship or immigration status, available to anyone or any entity for the purpose of immigration enforcement. This includes any databases maintained by private vendors.

The bill also provides that any agreements that a local agency may have to share such information in conflict with these provisions will be terminated on the effective date of that section. This appears consistent with California Civil Code Section 1441 which provides “[a] condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.”

4. No Peace Officer Working for Federal Agencies

This bill further prohibits state or local law enforcement from placing peace officers from placing peace officers under the supervision of federal agencies or employing peace officers deputized as special federal officer or special federal deputies except to the extent those peace officers remain subject to California law governing conduct of peace officers and the policies of the employing agency.

Should this provision be limited to situations when the purpose is immigration enforcement? Are there potentially other areas where it would be helpful for California peace officers to be loaned to a federal agency?

5. No Transfer to Federal Authority without Warrant

This bill prohibits state and local law enforcement agencies or school police or security departments from transferring an individual to federal immigration authorities for the purpose of immigration enforcement without a judicial warrant.

6. Permits specific requests about arrests and convictions

This bill clarifies that it is not intended to prevent any state or local law enforcement agency from responding to a request from federal immigration authorities for information about a specific person's previous criminal arrests or convictions where otherwise permitted by state law.

7. No Longer Requires Notification to ICE when a Person is Charged with Controlled Substance Offense

Existing law provides that when there is reason to believe that a person arrested for a violation of one of specified controlled substance provisions may not be a citizen of the United States the arresting agency shall notify ICE. This bill would delete that provision.

8. Confidentiality Policies

This bill requires, within six months of the effective date of this bill, all state agencies to review and edit their confidentiality policies to ensure that eligible individuals are not deterred from seeking services or engaging with state agencies. The policies shall ensure that information collected from individuals is limited to that necessary to perform the agencies duties and is not used or disclosed or any other purpose.

To assist with the adoption of policies the bill requires, within three months of the effective date of this bill, the Attorney General to publish a model contractual provisions for all state agencies that partner with private vendors for data collection purposes to ensure those vendors comply with the confidentiality policies.

The bill also requires the Attorney General, within three months after the effective date, in consultation with appropriate stakeholders, shall publish model policies for limiting immigration enforcement to the fullest extent possible consistent with federal and state law at public schools, state operated health facilities, courthouses and shelters to ensure they remains safe and accessible to all California residents regardless of immigration status. All public schools, state operated health facilities, and courthouses shall implement the model policy and other organizations providing physical or mental health, education or accesses to justice are encouraged to adopt the model policy.

9. Federal Preemption

This bill provides that nothing in this chapter prohibits or restricts any government entity or official from sending to, or receiving from, federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful of an individual under federal law.

Do any provisions of this bill conflict with this provision?

10. Support

Alliance for Boys and Men of Color supports this bill stating:

California is already familiar with the harmful effects of entangling local law enforcement agencies with immigration enforcement. Prior to its termination, the discredited “Secure Communities” program (S-Comm) operated in California as an indiscriminate mass deportation program at great cost to California both financially and otherwise. According to a report prepared by Justice Strategies in 2012, under S-Comm, California taxpayers spent an estimated \$65 million annually to detain people for ICE.¹ Continuing to tangle state and local public safety resources with the dirty business of deportations threatens the civil rights and safety of all who reside in California. Such actions foster racial profiling, police mistreatment, and wrongful arrests, which further undermine trust between local communities and law enforcement.

The American Academy of Pediatrics supports this bill stating:

It is our strongly held belief that all children should be afforded the right to attend school, visit a doctor’s office, or approach a police officer for help without fearing for their safety. Parents should be able to attend school events and parent-teacher conferences, seek medical care, and request police assistance for themselves and their children without concern that their families will be torn apart as a result. Subjecting California families to programs and policies that threaten these central functions of parenting could pose innumerable, grave consequences to the social, psychological, and physical well-being of children.

SB 54 (de León) would dramatically advance the health of California children by assuring that no child or parent need fear detention, separation, or deportation as a result of seeking an education or medical care. It would help to reduce the toxic burden of fear that many children across our state live with every day, in a time when that fear has grown substantially more severe. And it would affirm our commitment to doing right by each and every child in our diverse communities, no matter who they are or the circumstances that brought them here.

11. Opposition

The California State Sheriffs Association opposes stating:

We understand and appreciate the sensitivity of this issue and stand ready to continue to discuss it further. Unfortunately, this bill restricts local agencies from working with our federal partners. SB 54 prohibits law enforcement from responding to federal requests for notification when a jail houses someone who might be the subject of an immigration enforcement action. State law, the TRUST Act, already governs when and how a local entity may detain a person subject to an immigration hold. That said, we believe it is inappropriate for the state to tell a local agency that it cannot respond to a request for information from the federal government.

Additionally, by prohibiting law enforcement agencies from giving federal immigration authorities access to interview individuals in agency custody for immigration enforcement purposes, this bill creates a hurdle between governmental agencies that are all trying to fulfill their duties and obligations. This is not a comment on any particular policy, but rather relates to the desire and need for law enforcement to be able to work together at all levels of government.

Further, despite the bill's language that nothing prohibits law enforcement from sending to, or receiving from, federal immigration authorities information regarding an individual's citizenship or immigration status, we are concerned that the bill's provisions restricting communication and interaction with federal authorities could be construed in such a way that vital federal funding could be jeopardized.

-- END --