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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 578                      **Hearing Date:** June 20, 2017  
**Author:** Reyes  
**Version:** February 14, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Threatening a Witness: Threats to Report Immigration Status*

## HISTORY

**Source:** Central American Resource Center  
Coalition for Humane Immigrant Rights

**Prior Legislation:** AB 2792 (Bonta) Ch. 768, Stats. of 2016  
AB 524 (Mullin) Ch. 572, Stats. of 2013  
AB 4 (Ammiano) Ch. 570, Stats. of 2013  
SB 940 (Leslie) Ch. 500, Stats. of 1997

**Support:** Association for Los Angeles Deputy Sheriffs; California Association for Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

## PURPOSE

*The purpose of this bill is expand the witness intimidation statute to include the act of knowingly and maliciously threatening to report the actual or suspected immigration status of a witness or victim, or that of a family member or relative of the witness or victim.*

*Existing law* provides that when the punishment for a felony is not otherwise stated in the law, the punishment is 16 months, or two or three years in state prison, unless the offense is eligible for a county jail sentence under realignment. (Pen. Code, § 18.)

*Existing law* provides that any person who does any of the following is guilty of witness intimidation and shall be punished by imprisonment in a county jail for not more than one year, or in the state prison:

- 1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law; or,

- 2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. (Pen. Code, § 136.1, subd. (a).)

*Existing law* provides that any person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of witness intimidation and shall be punished by imprisonment in a county jail for not more than one year, or in the state prison:

- 1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge;
- 2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof; or,
- 3) Arresting or causing or seeking the arrest of any person in connection with that victimization. (Pen. Code, § 136.1, subd. (b).)

*Existing law* punishes the aforementioned acts of witness intimidation by two, three, or four years in the state prison when the perpetrator knowingly and maliciously commits the act under any of the following circumstances:

- 1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person;
- 2) Where the act is in furtherance of a conspiracy;
- 3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section; or,
- 4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony. (Pen. Code, § 136.1, subd. (c).)

*Existing law* provides that every person attempting the commission of any act described above is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, is not a defense. (Pen. Code, § 136.1, subd. (d).)

*Existing law* defines extortion as “the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” (Pen. Code, § 518.)

*Existing law* provides that fear, such as will constitute extortion, may be induced by a threat to report immigration status or suspected immigration status. (Pen. Code, § 519.)

*This bill* provides that if an act of witness intimidation is knowingly and maliciously accomplished by threatening to report the actual or suspected immigration status of a witness or victim, or that of family member or relative of the victim or witness, then it is punishable by two, three, or four years in state prison.

*This bill* makes other technical, non-substantive changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

State and federal policies that impact the immigrant community have rapidly changed over the past couple of decades. This has led to miscommunication regarding the protections immigrants may have when interacting with certain government entities, including law enforcement. Some of these policies include Secure Communities (S-Comm), which allows local law enforcement to share the biometrics of an individual with Immigration Customs Enforcement (ICE) regardless of a conviction, and the 287(g) program, which allows local law enforcement to enforce immigration law. During implementation of such policies it was common for individuals to be detained for minor encounters with law enforcement such as a traffic violation.

As the state with the largest immigrant population in the country California has enacted significant legislation to strengthen the relationship between local law enforcement and the immigrant community, including the passage of the Trust Act (AB 4 – Ammiano) and the Truth Act (AB 2792 – Bonta), which limits the collaboration between local law enforcement and ICE as it concerns individuals who are in custody. Additional state legislation that assisted in this effort includes AB 2027 (Quirk) and SB 674 (De León) which requires law enforcement agencies to certify specific documentation when a non-citizen victim cooperated said agency. However, recent turn in events have once again shifted the relationship that law enforcement has with immigrants in the state and across the nation.

Since the election of President Trump misinformation centered around law enforcement and the immigrant community has resurfaced and was recently re-enforced on January 25 when he signed an Executive Order (EO) known as “Enhancing Public Safety in the Interior of the United States”. This EO considers all undocumented individuals a priority for removal, increase 287(g) agreements, revives S-Comm, and expedites the removal process, among other things. This premise of this EO is that all undocumented individuals are a threat to the welfare and national security of the nation. The implementation of this EO has increased the amount of arrest of undocumented individuals who have no criminal history.

As a direct result of the EO, interior ICE agents have been seen apprehending domestic violence victims and other victims of crimes in courthouses across the nation. In the city of Los Angeles, the reporting of sexual assaults has dropped by 25% in comparison to last year's data.

Immigrant women who experience domestic violence face significant barriers in reporting their abusers, including the threat of deportation, hiding or destroying forms of documentation (visas, passports, green cards), and withdrawing papers for legalization. ICE's new tactics in apprehending individuals has renewed fears within the immigrant community to the extent that multiple government entities have experienced an alarming rate of participation rates drop in programs as the CA Dream Act, Medi-Cal, and Cal Fresh, among others.

Deportation has a significant impact on an individual's livelihood that may result in the separation of family, loss of economic stability and assets, and in many cases the placement into a country that is unfamiliar.

## 2. Concerns Regarding the Intimidation of Immigrants

On January 25, 2017, President Trump signed Executive Order 13768, titled "Enhancing Public Safety in the Interior of the United States." 82 Fed.Reg. 8799 (Jan. 25, 2017) <<https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>> [as of Jun. 13, 2017]. The executive order vastly expands the proportion of the immigrant population who face potential risk of deportation, and prioritizes the removal of aliens who "have been convicted of *any* criminal offense; have been charged with *any* criminal offense, where such charge has not been resolved; have committed acts that constitute a chargeable criminal offense; have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency; have abused any program related to receipt of public benefits; are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; *or in the judgment of an immigration officer, otherwise pose a risk to public safety or national security.*" (Italics added.)

Additionally, the executive order directs the hiring of 10,000 additional immigration officers, and withholds federal funding from "sanctuary jurisdictions" or states and cities that limit cooperation with federal immigration officers. Notably, Section 9(a) of the executive order was challenged by the County of Santa Clara and the City and County of San Francisco. In the consolidated cases, the U.S. District Court for the Northern District of California granted the counties' motions for a nationwide preliminary injunction, but held that the injunction "does not impact the Government's ability to use lawful means to enforce existing conditions of federal grants or 8 U.S.C. 1373, nor does it restrict the Secretary from developing regulations or preparing guidance on designating a jurisdiction as a 'sanctuary jurisdiction.'" <<http://www.politico.com/f/?id=0000015b-a6d5-de92-a17b-aed55e780001>> [as of Jun. 13, 2017].

Since the enactment of Executive Order 13768, there have been media accounts of individuals with no criminal record being detained or deported. (See <<http://www.sacbee.com/news/local/article151411322.html>> [as of Jun. 13, 2017].) Given the current climate, there are concerns that the perpetrator of a crime may now be more likely to intimidate a victim or witness from testifying based on actual or suspected immigration status.

This bill seeks to strengthen protections for crime victims and witnesses by expanding the witness intimidation statute to include the act of knowingly and maliciously threatening to report the actual or suspected immigration status of a witness or victim, or that of a family member or relative of the witness or victim.

### **3. Related Legislation**

AB 291 (Chiu) makes it a cause for suspension, disbarment, or other discipline for a member of the State Bar to report suspected immigration status or threaten to report suspected immigration status of a witness or party to a civil or administrative action or his or her family member, to a federal, state, or local agency because the witness or party exercises or has exercised a right related to the hiring of residential real property. AB 291 is pending hearing in the Senate Judiciary Committee.

SB 785 (Wiener) prohibits the disclosure of a person's immigration status in public court records without first having an in-camera hearing with the judge to determine whether the information is relevant. SB 785 is pending hearing in the Senate Judiciary Committee.

### **4. Argument in Support**

The Association for Los Angeles Deputy Sheriffs supports this bill stating:

This bill would include in the list of circumstances that make threatening a witness or victim a felony a threat to report the immigration status or suspected immigration status of a crime victim or witness, or of a victim's or witness' family member or relative.

The use of coercion or threats to prevent a witness from coming forward strikes at the heart of the justice system.

**-- END --**