
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1219 **Hearing Date:** April 24, 2018
Author: Gaines
Version: February 15, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Law Enforcement: Sharing Data*

HISTORY

Source: Author

Prior Legislation: SB 54 (De Leon), Ch. 495, Stats. of 2017
AB 298 (Gallagher), 2017, failed in Assembly Public Safety
AB 1252 (Allen), 2017, failed in Assembly Public Safety
AB 4 (Ammiano), Ch. 570, Stats. of 2013

Support: Unknown

Opposition: American Civil Liberties Union; California Immigrant Policy Center; California Public Defenders Association; Drug Policy Alliance; Ella Baker Center for Human Rights; Root & Rebound

PURPOSE

The purpose of this bill is to repeal the California Values Act, which defines the circumstances under which law enforcement agencies (LEAs) may assist in the enforcement of federal immigration laws and participate in joint law enforcement task forces.

Existing law prohibits LEAs (including school police and security departments) from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. These provisions are commonly known as the Values Act. Restrictions include:

- Inquiring into an individual's immigration status;
- Detaining a person based on a hold request from ICE;
- Providing information regarding a person's release date or responding to requests for notification by providing release dates or other information unless that information is available to the public;
- Providing personal information, as specified, including, but not limited to, name, social security number, home or work addresses, unless that information is "available to the public;"

- Arresting a person based on a civil immigration warrant;
- Participating in border patrol activities, including warrantless searches;
- Performing the functions of an immigration agent whether through agreements known as 287(g) agreements, or any program that deputizes police as immigration agents;
- Using ICE agents as interpreters;
- Transfer an individual to immigration authorities unless authorized by a judicial warrant or judicial probable cause determination, or except as otherwise specified;
- Providing office space exclusively for immigration authorities in a city or county law enforcement facility; and,
- Entering into a contract, after June 15, 2017, with the federal government to house or detain adult or minor non-citizens in a locked detention facility for purposes of immigration custody. (Gov. Code, § 7284.6, subd. (a).)

Existing law describes the circumstances under which a LEA has discretion to respond to transfer and notification requests from immigration authorities. These provisions are known as the TRUST Act. LEAs cannot honor transfer and notification requests unless one of the following apply:

- The individual has been convicted of a serious or violent felony, as specified;
- The individual has been convicted of any felony which is punishable by imprisonment in state prison;
- The individual has been convicted within the last five years of a misdemeanor for a crime that is punishable either as a felony or misdemeanor (a wobbler);
- The individual has been convicted within the past 15 years for any one of a list of specified felonies;
- The individual is a current registrant on the California Sex and Arson Registry;
- The individual has been convicted of a federal crime that meets the definition of an aggravated felony as specified in the federal Immigration and Nationality Act; or,
- The individual is identified by ICE as the subject of an outstanding federal felony arrest warrant for any federal crime; or,
- The individual is arrested on a charge involving a serious or violent felony, as specified, or a felony that is punishable by imprisonment in state prison, and a magistrate makes a finding of probable cause as to that charge. (Gov. Code, § 7282.5.)

Existing law provides that 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, subs. (b) & (c).)

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 repeals the California Values Act, which defines the circumstances under which law enforcement agencies (LEAs) may assist in the enforcement of federal immigration laws and participate in joint law enforcement task forces.

This bill allows local law enforcement to voluntarily cooperate with immigration officials by detaining an individual on the basis of an immigration hold, as defined, after that individual becomes eligible for release if that detention would not violate federal, state, or local law or local policy, and only for specific circumstances, including, among others, that the subject has been convicted at any time of specified offenses.

This bill requires that when there is reason to believe a person may not be a citizen of the United States, and that person is arrested for specified drug offenses, including, among others, unauthorized possession or sale of cannabis, and possession of narcotics, the arresting agency to notify the appropriate agency of the United States having charge of deportation matters.

COMMENTS

1. Need for This Bill

According to the author:

In 2018, as a result of 2017's Senate Bill 54 (de Leon), California became the nation's first and only so-called "Sanctuary State," shielding illegal alien criminals from federal immigration authorities in most circumstances. In practice, this means that California's state and local law enforcement agencies (excepting CDCR) are forbidden from any immigration enforcement activities, including responding to immigration holds or detainers or transferring an individual to immigration authorities without a judicial warrant.

To reiterate, the Sanctuary policy enacted with SB 54 deals only with those illegal aliens who have violated California law, and committed some crime beyond illegal entry into the United States.

Local law enforcement agencies opposed the introduction of limitations on their data sharing because the restrictions are a threat to public safety. As stated by the California State Sheriff's Association in their opposition letter to SB 54, the 2017 bill that created the restrictions:

"Our overarching concern remains that limiting local law enforcement's ability to communicate and cooperate with federal law enforcement officers endangers public safety...SB 54 would preclude staff in our jails from notifying ICE, at their request, of the pending release of certain wanted, undocumented criminals – including, but not limited to, repeat drunk drivers, misdemeanor hit and run drivers, those who assault peace officers, serial thieves, animal abusers, chronic abusers of dangerous drugs such as methamphetamine and heroin, and known criminal gang members arrested for most misdemeanor crimes."

Law enforcement at every level should be working together, seamlessly, with no restrictions, to ensure the highest level of public safety.

In addition, the data sharing restrictions have engendered a federal lawsuit against California, and have placed federal funds at risk.

2. California Values Act

The Values Act, which became effective on January 1, 2018, limits the involvement of state and local LEAs in federal immigration enforcement. It prohibits law enforcement agencies (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.

After enactment of the Values Act, the federal government has sued the State of California alleging that the Act and two other state laws have made it impossible for federal immigration officials to do their jobs. The lawsuit alleges that the statutes “reflect a deliberate effort by California to obstruct the United States’ enforcement of federal immigration law” and “impede[s] consultation and communication between federal and state law enforcement officials.” (Benner & Medina, *Trump Administration Sues California Over Immigration Laws*, New York Times (March 6, 2018) <<https://www.nytimes.com/2018/03/06/us/politics/justice-department-california-sanctuary-cities.html>>.)

Recently, the Orange County Board of Supervisors has voted to join the Trump administration in the challenge to the state laws. (Kopetman, *Orange County Votes to Join Trump Administration Lawsuit Against California Sanctuary Law*, The Orange County Register (March 27, 2018) <<https://www.ocregister.com/2018/03/27/orange-county-votes-to-join-lawsuit-against-california-sanctuary-law/>>.)

This bill seeks to repeal the Values Act.

3. Heightened Concerns of Intimidation of Immigrants

On January 25, 2017, President Trump signed Executive Order 13768, titled “Enhancing Public Safety in the Interior of the United States.” (<https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>>.) 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.

Additionally, the executive order instructs officers to remove any illegal immigrant that poses “a risk to public safety or national security.” It increases resources for enforcement with 10,000 additional immigration officers. The executive order also withholds federal funding from “sanctuary jurisdictions” or states and cities that limit cooperation with federal immigration officers.

Since the enactment of Executive Order 13768, there have been accounts of immigration sweeps in which ICE agents have arrested people at places of employment, in court, and even at schools. (See e.g., <http://www.latimes.com/local/lanow/la-me-ln-norcal-immigration-arrests-20180227-story.html> ; <https://www.scpr.org/news/2017/03/16/69965/california-justice-doesn-t-want-immigration-arrest/> ; <http://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html>.)

4. ICE Involvement Can Impede Cooperation Between Law Enforcement and the Community

A study by the University of Illinois – Chicago sought to assess police involvement in immigration enforcement impacted public safety and police-community relations. Latinos in Cook (Chicago), Harris (Houston), Los Angeles, and Maricopa (Phoenix) counties were surveyed on their perception of local law enforcement when there is police involvement in immigration enforcement. The results showed that “a substantial number of Latinos are less

likely to voluntarily contact the police if they are a victim of a crime, or to provide information about a crime, because they are afraid the police will ask them or persons they know about their immigration status.” (*Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Nik Theodore et al., (May 2013), p. 1

http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF)

Specifically, the study found that 44 percent of Latinos surveyed reported they 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 into their immigration status or that of people they know. (*Id.* at p. 6.) Likewise, 45 percent of Latinos surveyed stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status. And while undocumented immigrants are particularly fearful to contact law enforcement authorities if they were victims of a crime or to offer information relating to a crime; fear of police contact is not confined to immigrants; but rather, it is shared by US-born Latinos. (*Ibid.*)

5. Honoring Immigration Holds

Previously, under the TRUST ACT, LEAs could detain an individual past their scheduled release date in response to a hold request from immigration if the detainee’s criminal history involved a serious or violent felony. The Values Act prohibited such detentions. (Gov. Code, § 7284.6, subd. (a)(1).) Now under the revised TRUST Act provisions, LEAs have discretion to honor transfer and notification requests if certain conditions are satisfied. These conditions include convictions for specified criminal offenses, or arrests for other specified criminal offenses in which a magistrate has made a finding of probable cause as to the charge. (Gov. Code, § 7282.5, subd. (a).)

This bill would once again allow LEAs to hold an individual past his or her release date for purposes of an immigration hold, if certain conditions are met. In addition, this bill would expand the conditions allowing cooperation for purposes of honoring such a hold. Specifically, this bill would eliminate the current washout period which allow cooperation based on an individual’s prior convictions. Also, this bill would allow cooperation based on arrests for a much broader list of crimes, as long as a magistrate has made a finding of probable cause as to the charge.

6. Argument in Opposition

According to the American Civil Liberties Union:

SB 1219 is contrary to existing law that sets limits on local entanglement with federal immigration enforcement agencies and raises constitutional concerns. Starting in 2013, California began disentangling state and local public safety resources from the federal deportation system, after recognizing that this entanglement undercut immigrant communities’ confidence in law enforcement and undermined the public safety of all Californians. The TRUST Act (AB 4, Ammiano, 2013) ensured that people with low-level, non-violent misdemeanor offenses were not unnecessarily held for deportation and provided LEAs with

discretion to not use scarce taxpayer dollars on immigration detainees. Last year, the Legislature and Governor Brown came together to enact the California Values Act, (SB 54, de Leon, 2017), which amongst other reforms included an absolute prohibition on LEAs honoring immigration detainees. While the Trump administration has recently filed a lawsuit challenging portions of SB 54 in federal court, this lawsuit notably does not challenge the provision of SB 54 that bans honoring immigration hold requests.

These reforms were enacted in response to the federal government's controversial "Secure Communities" or "S-Comm" deportation program, which relied on immigration holds and detainees. In 2014, a federal court found S-Comm unconstitutional and in November 2014, the Obama Administration acknowledged its failures and dropped the program. *See Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (holding that plaintiff's detention on an ICE detainer after she would otherwise have been released "constituted a new arrest, and must be analyzed under the Fourth Amendment;" and resulting in a \$30,100 settlement). In January 2017, the Trump administration reversed course, reinstated S-Comm, and significantly expanded enforcement actions. S-Comm operated in California as an indiscriminate mass deportation program that cost the state's taxpayers \$65 million annually.

California has already experienced the devastating fiscal and social impacts of allowing immigration detainees and has wisely set forth on a different course of limiting local law enforcement entanglement with federal immigration enforcement in a manner that advances the public safety and well-being of all California residents.

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